ORIGINAL

E000012341

OPEN MEETING AGENDA ITEM

March 19, 2021

EXCEPTIONS

Chairwoman Marquez Peterson
Commissioner Sandra Kennedy
Commissioner Justin Olson
Commissioner Anna Tovar
Commissioner Jim O'Connor

Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Re: Docket No. **RU-00000A-19-0132**
In the Matter of Proposed Modifications to the Rules Regarding Termination of Service.

AARP COMMENTS AND EXCEPTIONS TO REVISED STAFF MARCH 9, 2021 RULEMAKING PROPOSAL

AARP continues to be grateful that the Arizona Corporation Commission ("Commission") established this rulemaking case following the tragic death of 72-year-old Stephanie Pullman in her home during a heat wave in September 2018, after she was disconnected from her electricity service, despite making a partial payment on her bill. There appears to be broad consensus that the dangers to utility consumers from extreme weather justify a rule with much greater consumer protections and is a measure that is necessary to "protect the public health, safety, and welfare" pursuant to Arizona Revised Statues ("A.R.S.") §4l~l026(A)(1).

AARP has approximately 900,000 Arizona members, and fair and reliable utility rates and reliable service is a priority for these older consumers, particularly during extreme weather. Many of our members live on fixed incomes. Some members

ACC - Docket Control - Received 3/19/2021 3:04 PM
ACC - Docket Control - Docketed 3/19/2021 3:21 PM

struggle with the inability to pay their utility bills and are more vulnerable to falling behind in their utility payments. The prospect of disconnection from an essential utility service can be a matter of life and death. The Commission is justified it establishing a set of billing rules which provide consumer protections for all customers and which gives every reasonable accommodation to the health and safety of vulnerable consumers.

During the long procedural course of this rulemaking case, AARP has made several comments and presentations and has sought compromise among the many stakeholders that will be affected by this rule. Throughout this process, AARP has praised the Commission Staff for its efforts to propose draft rules that have served as a helpful strawman to which other parties could respond and for its efforts to seek input from many stakeholders. However, the original Staff proposals which AARP supported included a more robust set of consumer protections than recent drafts. Almost all of AARP's recommendations have been dropped from the most recent March 9, 2021 Staff rulemaking draft and proposed order, filed in this case on March 9, 2021.

After the Staff draft of protections was weakened in its November 27, 2020 version, AARP was still able to support that previous proposal. However, the March 9, 2021 Staff draft of the rules weakens the consumers protection proposals too much for AARP support. AARP can concede some the issues that have been dropped by Staff, primarily out of an attempt to compromise with utilities interests, but AARP cannot support this latest Staff draft without the two significant changes discussed below.

1. **HOT WEATHER MORATORIUMS**

The issue that continues to be the most contentious among stakeholders remains as the most important issue for AARP in this rulemaking, and it has generated overwhelming support from the general public. AARP supported the Staff's *originally proposed* moratoriums that would have prohibited residential household disconnections when the temperature in a region is forecasted to be below 32°F for the next five days, or when temperatures would exceed **95°F** for the next five days' forecast. After listening to many hours of testimony from weather experts and public health experts in workshops held by the Commission, AARP continues to be convinced that using a threshold of 95°F is the most appropriate moratorium threshold, based upon the scientific evidence and the professional opinions presented by health experts.

There have been many attempts during this case to weaken the 95°F threshold, and AARP has been willing to compromise, provided that the temperature level was **combined** with other moratorium protections. However, in its latest draft, Staff has switched from a proposal that combined weather protections to a proposal that allows each utility to pick its own preferred moratorium.[1] This "dealer's choice" Staff proposal would allow a utility to choose from either a) a "heat advisory" issued by the National Weather Service (NWS), b) a temperature moratorium of 100 degrees Fahrenheit, *OR* c) a summer-long moratorium. AARP strongly opposes the proposal to allow each utility to pick its own regulation, and particularly opposes allowing only use of the NWS "heat

[1] See Staff March 9, 2021 Proposal of rules for electric utilities at R14-2-211(A) (11), p. 8.

advisories" as a hot-weather-related protection under the rules, for several reasons that are explained below.

Significant evidence has been presented in this case regarding the deadly risks of hot weather to older people. A heat wave is the deadliest type of weather phenomenon, greater than all other extreme weather phenomena combined, with regard to the number of fatalities that can be caused by it. Heat-related death is a particularly big problem for older citizens, as the incidence of death from extreme heat indoors is heavily weighted based upon age. Maricopa County reports that about three-fourths (75%) of such deaths occur to individuals over 50 years of age.[2] And the number of indoor heat-related deaths do not tell the whole story of harm, because increases in serious injury and illness is also correlated to hot weather. The Arizona Department of Health Services has reported emergency room visits nearing 3,000 annually for heat-related illnesses, a significant majority of which occurred for individuals over 65 years of age. The record evidence clearly shows that death and injury from extreme heat is correlated with age and increasing indoor heat temperatures are correlated with death—the hotter it is indoors, the higher the mortality risk.[3]

Previously in this proceeding, AARP has stated that it could support a higher temperature threshold than a 95° F weekly limit on terminations, but only if other greater moratorium protections were added on top of the temperature ban. We are concerned that the Staff rule would allow utilities to pick the moratorium limit that provides the least protection for its consumers, if they so choose. AARP shares the legal and public policy

[2] Heat-Associated Deaths in Maricopa County, AZ Final Report for 2016, p. 9.
[3] [Maricopa County chart].

concerns filed by the Residential Utility Consumer Office (RUCO) in its March 18, 2021 Exceptions regarding the inappropriateness of deferring regulatory limits to the discretion of regulated entities as well as deferring the setting of such public health related restrictions to another agency or organization. It would also be confusing to consumers wishing to understand the rules that apply to their situation, if those consumers have to search for utility-specific tariffs, as opposed to simply looking up the Commission's rules. Individual utility tariffs are much harder for ordinary citizens to locate, as opposed to locating statewide rules, which are supposed to have general applicability and have greater transparency. One consistent state-wide standard for all regulated utilities is essential for this to be a good rule.

However, it is notable that, according to an analysis by Arizona State University's David Hondula, Ph.D., who suggested in his testimony that looking primarily to air temperature is just as good a policy as, or better than, using a heat index or other more complicated formula to predict health outcomes related to heat exposure. Also, NWS experts testified that their ability to predict temperatures is extremely good, and all other complementary aspects of forecasting provide less dependable predictability.

As to the Staff's proposed NWS "heat advisory" option, AARP is concerned partly because its experts testified that NWS uses a different (and weaker) definition of "heat advisory" in Arizona than the agency uses in other regions of the country. Moreover, NWS has recently announced that it plans to completely eliminate the category of heat advisories in the future.[4] As reported in the Washington Post on June 12, 2020:

4

> Deciphering the myriad alerts issued by the National Weather Service isn't easy. With roughly 100 different warnings or advisories the agency disseminates during hazardous weather, it comes as no surprise that mix-ups among the public are routine. Now, the National Weather Service is giving its warning paradigm a facelift to reduce confusion and streamline the process of communicating weather hazards. Some products may be eliminated entirely, and others combined or restructured.
>
> It's an action many social scientists say is a step in the right direction, but some wonder if the arguably chaotic system is even salvageable.
>
> . . .
>
> Among the most significant proposed changes is axing weather advisories altogether. Social science research undertaken by the NWS over the past several years revealed that advisories are poorly understood and inaccurately interpreted. For example, advisories are frequently conflated with watches.[5]

The moratorium rules adopted by the Commission in this case will be permanent for many years, and so it would be unfortunate if the Commission's rule deferred to an NWS standard that is later revised, redefined, or completely eliminated when a new hot weather notice scheme is developed. For this reason, AARP remains highly skeptical of placing the current "heat advisory" system in permanent rules, as it may be deferring to a shifting and changing standard.

Most of the other states that have a hot weather rule use 95° F as the limit on utility terminations, and it is clearly the best practice on this issue around the country. AARP continues to believe that this would be the best practice in this case; however, we can, for the purposes of compromise, support 100° F as the moratorium limit in the rule, provided it is adopted by this Commission as *the* statewide moratorium, rather than just

[5] https://www.washingtonpost.com/weather/2020/06/12/national-weather-service-proposes-eliminating-advisories-simplify-severe-warning-system/

one option and each utility is allowed to pick an alternative to it. AARP could also be supportive of a calendar-based moratorium that includes all summer months, provided that standard is bolstered with additional temperature limitations on terminations for the shoulder months.

2. **DELINQUENT BILL THRESHOLD**

The Staff originally supported in its draft rules increasing the current $50.00 limit on allowing utility terminations to a $300.00 threshold on the delinquent unpaid balance that is necessary to trigger the disconnection process. AARP believes that until the unpaid amount reaches that threshold, utilities should be pursuing other means to collect on their bills, while still keeping the lights on. The process of collection should not escalate to the level of termination without a more material amount. The health dangers are too great to allow disconnection over a small unpaid bill. A higher threshold in the rule could have made a difference in the case of Stephanie Pullman's service termination and ultimate death.

Unfortunately, the March 9, 2021 Staff draft is now proposing a threshold of only $100.00.[6] AARP continues to support the original proposal of a $300.00 threshold (or at the very minimum, a $200.00 threshold). It is important to realize that the permanent rules that will be adopted by the Commission may be in place for many years, if not decades, and so inflation should be factored into the dollar amount adopted in this provision of rules.

[6] See Staff March 9, 2021 Proposal of rules for electric utilities at R14-2-211(A) (15), p. 9.

Conclusion

The various stakeholder meetings and hearings that the Commission has held over the past years have been informative and productive. AARP looks forward to a final Commission rulemaking order that brings these important changes to a conclusion. We implore the Commission to weighs these and all other important consumer protection issues, and finally adopt a rule that lays out a statewide standard on the dangers of extreme heat—a standard that is transparent, equally protective of all residential customers, and provides significant protections that can save lives and promote good public health.

Sincerely,

Dana M. Kennedy

Dana M. Kennedy
State Director,
AARP Arizona

Attachments:

A. The Electricity Journal 33 (October 2020) 106859 "Electricity Utility Disconnection Policy and Vulnerable Populations"

B. National Consumer Law Center, "Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now", (February 2021).

C: Washington Post, "National Weather Service Proposes Eliminating 'Advisories' to Simplify Severe Warning System", June 12, 2020.

The Electricity Journal 33 (2020) 106859

Contents lists available at ScienceDirect

The Electricity Journal

journal homepage: www.elsevier.com/locate/tej

Electric utility disconnection policy and vulnerable populations

Matthew Flaherty, Sanya Carley *, David M. Konisky

Paul H. O'Neill School of Public and Environmental Affairs, Indiana University, United States

ARTICLE INFO

Keywords:
Utility disconnection
Utility shutoff
Policy
Energy insecurity
Climate change

ABSTRACT

When a household is energy burdened, its members may struggle to pay its energy bills and face the potential of service disconnection. While such conditions can inflict mental and physical harm on household members, more significant consequences include death from exposure to excessive heat or cold. State utility disconnection policies have the potential to protect vulnerable populations from such outcomes. In this article, we examine disconnection policies, and the immense variation that they exhibit across states. We discuss how different policy protections interact and how seemingly minor differences in policy design produce significant differences in levels of protection. We further show how a changing climate is leading to increased exposure to extreme temperatures, and discuss how policy reforms could address these risks. We conclude with a set of recommendations for how to improve the design of such protections, expand their reach, and monitor and track utility connections and disconnections.

1. Introduction

During a heat wave in Arizona in early September 2018, 72-year-old Stephanie Pullman died in her home (Whitman, 2019a,b). Her electricity had been disconnected by Arizona Public Service on September 7, a day when temperatures reached 107 degrees Fahrenheit. She had received a "Shut-Off Warning" in the weeks prior indicating that she had an outstanding balance of $176.84. Although she made a partial payment, her electricity was still disconnected. A medical examiner determined that Ms. Pullman's cause of death was "environmental heat exposure in setting of significant cardiovascular disease." Without electricity, she was left without air conditioning, and faced extreme temperatures that exacerbated underlying health problems.

Exposure to extreme heat or extreme cold, coupled with an underlying vulnerability such as heart disease, social isolation, or simply age, can lead to substantial numbers of deaths during extreme weather. For instance, a Chicago heat wave in July 1995 is estimated to have caused around 700 deaths (Klinenberg, 2003). A 2003 heatwave in Europe caused many thousands of excess deaths, including an estimated 14,800 in France alone (Bouchama, 2004). These heat impacts tend to disproportionately affect people of color, along with elderly individuals living in public housing (Klinenberg, 2003).

The impacts of heat exposure on morbidity and mortality have become better known in the past few decades, yet most policies in the U. S. focus mostly on cold weather. With a changing climate, both types of protections are important. In the coming years, most areas of the U.S. will experience significant increases in the number of days with extreme heat. And despite a warming world, greater climate variability in winter due to a weakening jet stream may also increase exposure to extreme temperatures in colder months, especially in the Midwest and Northeast (Romanowsky et al., 2019). General global trends in urbanization, coupled with urban heat island effects, will likely expose greater numbers of people to extreme heat in coming years as well. The 2003 European heatwave saw the greatest mortality rates in the most urbanized areas (Rey et al., 2009). Moreover, recent research has shown that urban heat island effects can vary widely across cities, with low-income and minority neighborhoods experiencing the worst of extreme temperatures (Popovich and Flavelle, 2019).

While access to energy and avoiding utility disconnections have long been challenges for low-income individuals in the U.S., no federal policy protects customers from disconnections. Because utilities are generally regulated at the state level, policies vary widely in the levels of protection offered to customers. Additionally, state regulation of utilities is often limited to investor-owned utilities (IOUs). Rural electric cooperatives and municipal utilities may have their own disconnection protection policies, but state regulations often do not apply.

Disconnection protection policies have received sparse attention in the scholarly literature, though there has been important work done in the advocacy community (Franklin and Kurtz, 2017). In this article, we examine state policies and their variation. More specifically, we

* Corresponding author.
E-mail address: scarley@indiana.edu (S. Carley).

https://doi.org/10.1016/j.tej.2020.106859

Available online 20 October 2020

demonstrate how different attributes of customer protections interact and reveal how seemingly minor differences in policies can lead to significant differences in levels of protection. We further show how a changing climate is leading to greater exposure to extreme temperatures, and discuss how policy reforms could address these and other risks.

2. Background

Many low-income people experience a high energy burden, spending a large percent of their income on energy bills. Due to this burden, low-income individuals are the most likely to be in arrears on energy bills and thus at risk of disconnection of service for nonpayment. Marginalized and other vulnerable social groups also face higher than average energy burdens, often due to living in less energy-efficient homes, which require a greater amount of energy to heat and cool. Renters, the elderly, African-American households, and Latino households all pay more per square foot for utilities than the average household (Drehobl and Ross, 2016). Rural households also have higher than average energy burdens. Low-income, rural households face a median energy burden of 9%, while a quarter have burdens of 15 % or more (Ross et al., 2018). Some researchers have highlighted the interactions of housing policies and public housing disinvestment with utility disconnections and energy burden, calling for a more integrated approach to both (Hernández and Bird, 2010).

Even when excessive energy burden does not lead to a utility disconnection, households may experience various forms of insecurity as a result. Hernández (2016) has defined energy insecurity as "an inability to adequately meet basic household energy needs." Nearly one in three U.S. households experience some form of energy insecurity, whether having difficulty paying bills or struggling to keep homes at comfortable temperatures (Berry et al., 2018). More than 20 % have reported forgoing basic necessities in order to pay an energy bills (Berry et al., 2018). Such conditions may require households to choose between keeping the lights on, paying for medicine or food, and keeping homes at healthy and safe temperatures. Scholars have termed this hardship the "heat or eat" dilemma, finding that children in households with high energy burdens face disproportionate levels of food insecurity, poor health outcomes, and development challenges (Hernández, 2016).

A lack of access to energy can lead to serious health and safety consequences. For instance, the use of candles for light, space heaters, or generators cause many house fires and can lead to carbon monoxide poisoning (Franklin and Kurtz, 2017). Some customers rely on electricity to power medical equipment, such as ventilators or heart monitors, and loss of service can be life-threatening (Franklin and Kurtz, 2017). An inability to pay outstanding utility bills and additional fees after a disconnection can also lead to housing displacement, or homelessness due to eviction, or incarceration from unpaid bills (Verclas and Hsieh, 2018).

In order to address the problems of energy burden, energy insecurity, and their many related impacts, states have enacted policies that protect customers from disconnection of service in certain cases. These policies recognize that some customers, such as low-income customers or those dependent on electronic medical equipment, are uniquely vulnerable and require protection (Franklin and Kurtz, 2017). Many states also offer protections from disconnection during certain times of year due to the risks posed by extreme cold or heat. While all states regulate utility disconnections in some fashion, policies vary widely and many are decades old. They often fall short for low-income and other vulnerable groups, failing to prevent energy insecurity, harmful coping behaviors, and even deaths during extreme weather.

3. State disconnection policies

State disconnection policies vary widely, but most contain provisions that fall into a few common categories. In reviewing state policy variation, we consider four categories: protections against extreme temperatures, protections for vulnerable populations, procedural protections, and fiscal protections. These categories track the classification scheme used in Franklin and Kurtz (2017), but here we add granularity to capture additional nuance in policy variation. The Supplementary Appendix provides information on our methodology and coding, as well as state-by-state policy breakdowns. Table 1 provides a count of the number of policies in place across the country and Table 2 identifies the reach of these policies in terms of different types of utilities.

3.1. Protections from extreme temperatures

States generally take one of two approaches to protect against disconnection of service during extreme temperatures. The first approach is date-based, where disconnections are either prohibited or limited during a specified seasonal date range. The second approach is to prohibit disconnections for customers when temperatures fall below or rise above a defined threshold. Sometimes these protections are absolute, but in other cases they are conditional on entering into a payment plan. They may also be limited to certain customer groups, such as low-income or elderly customers.

Protections against exposure to extreme cold are generally date-based, especially in states with cold climates. Forty-one states and the District of Columbia offer some form of cold weather protection (see Panel A of Fig. 1). Thirty-three policies include a date-based approach, with Minnesota and Wyoming providing the longest period of protection at six months, and Idaho and West Virginia providing the shortest period of protection at 90 days. Some date-based protections apply only to elderly or low-income customers. Other times, the protection is not a prohibition on disconnection, but rather a relatively minor procedural change. For instance, in Delaware, Oklahoma, and Utah, the date-based winter protection policy is merely a requirement for a second attempt at notice prior to disconnection. In Montana, a winter disconnection requires approval from the Public Service Commissions, which is not normally required. As these examples illustrate, the precise coverage of protection policies is complicated and varies considerably by state.

Twenty states offer cold-weather protections based on specific temperature thresholds. Eleven states have some form of both date-based and temperature-based protections. Temperature-based protections are typically an absolute prohibition on disconnection, whereas date-based protections may be limited to a particular subset of customers or contingent on a customer entering into a payment plan. As such, date- and temperature-based policies are somewhat complementary, offering different types of protection, sometimes for different groups. Most temperature-based policies set a threshold temperature of 32 degrees Fahrenheit. A weather forecast that predicts a temperature below 32 degrees at any point during the day triggers protection from disconnection. A few states have lower temperature thresholds between 10 and 20 degrees, while a few others treat the 32-degree mark as a *maximum* threshold — i.e., protections only take effect if the predicted high temperature for the day is not expected to exceed 32 degrees.

Still fewer states have protections against exposure to extreme heat,

Table 1
Summary Counts of Types of State Disconnection Policies.

Type of protection	Total number
Cold protection	42
Temperature-based	19
Date-based	33
Heat protection	14
Temperature or heat-index based	14
Date-based	0
Protection for medical conditions	46
Notification requirement	51
Written notice	27
Attempted phone or in-person	36

Table 2
Coverage of State Utility Regulation related to Disconnections.

Electric utility type	States
All	District of Columbia, Maine, Maryland, Minnesota, Rhode Island, Vermont
Investor-owned only	Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Illinois, Iowa, Kansas, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Nevada, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Washington, West Virginia
Investor-owned + Municipal utilities	Alaska, New York, Texas, Wisconsin
Investor-owned + Electric cooperatives	Arizona, Arkansas, Hawaii, Kentucky, Louisiana, New Mexico, Utah, Virginia, Wyoming
Municipal utilities + Electric cooperatives	Nebraska

and all of these policies are temperature-based (see Panel B of Fig. 1). Only 14 states have heat protection policies, and protections apply to all customers in only nine of those states. Half of the states with heat protections use a temperature-based policy, where a forecasted temperature above a given threshold triggers protection. These temperatures range from 95 to 105 degrees Fahrenheit depending on the state. The other seven states with protection policies use heat advisories or excessive heat warnings to trigger protection.

3.2. Protections for vulnerable populations

Many disconnection policies include protections for socially vulnerable groups. The most common is for medical conditions, where equipment needed for one's health may require uninterrupted access to electricity. Forty-five states and the District of Columbia offer some form of medical protection, but as with most of these policies, the level of protection varies widely by state. Some medical protections are absolute and may be renewed indefinitely, regardless of level of arrearage, as long as the medical condition is certified by a professional.

In other cases, the protections offered with a medical certification are limited. For instance, in West Virginia, even customers with medical protections are required to pay on the account. In New Jersey, renewal of a medical protection is at the discretion of Board of Public Utilities. A certified note from a physician or public health official entitles a medically vulnerable customer to a mere ten days' delay of disconnection in Indiana. A second note can earn a vulnerable customer ten more days of protection, after which disconnection is at the utility's discretion, but this 20-day delay is not available more than once in a one-year period. Medical protections and other vulnerability protections are subject to the utility's discretion in Alabama. With more discretionary protections, low-income customers may be at a disadvantage due to a relative burden in appealing any decision or mounting a legal challenge.

Seventeen states offer additional layers of protection for elderly customers, which are often tied to temperature or notice provisions. In Nevada, cold and heat protections for most customers kick in at 15 and 105 degrees, while for elderly customers, these temperatures are 20 and 95 degrees. Similarly, in Vermont, protections in winter begin at 10 degrees for most customers, but 32 degrees for customers age 62 or older. Other states require additional forms of notice for elderly customers or permission from the public utility commission prior to disconnections of seniors during winter months. Michigan suspends reconnection fees for customers age 65 or older during winter months. California allows customers age 65 or older to designate a third party to receive notice of any accounts unpaid or subject to disconnection.

Five states provide additional protections for households with young children, while twelve states offer protections for people with disabilities. As with extra layers of protection for elderly customers, these sometimes take the form of additional notice requirements, a higher temperature threshold for protection in winter, or a lower temperature threshold for protection in summer. California, Illinois, Iowa, and Michigan also offer protections from disconnection for households with a family member in active military service.

3.3. Procedural protections

All states require utilities to provide some form of notice before disconnecting service, but these requirements vary significantly. At minimum, utilities must provide notice in writing via post, while 26 states and the District of Columbia also require either attempted in-person or telephone notice. New Jersey and North Dakota require notice via telephone only for customers over the age of 65. Another common procedural protection is a limitation on when disconnections can occur. Thirty-five states and the District of Columbia impose such limits, typically prohibiting disconnections on weekends, holidays, or at times outside of normal business hours. In the District of Columbia, if no in-person or telephone notice is confirmed, disconnections are postponed.

Another procedural concern involves communication of protection policies. In most cases, customers are responsible for knowing whether they are eligible for protection from disconnection, and utilities have no affirmative duty to alert customers of these policies. A few states require utilities to attempt actively to identify vulnerable customers who may be eligible for protection. In Maine, as the winter protection period approaches, utilities must send an informational packet to any customer disconnected in the preceding months, detailing how to seek payment assistance, pursue medical emergency protections, and initiate a dispute. In Wisconsin, during winter months, utilities are required to conduct an in-person visit the day after any disconnections to check for health or safety risks.

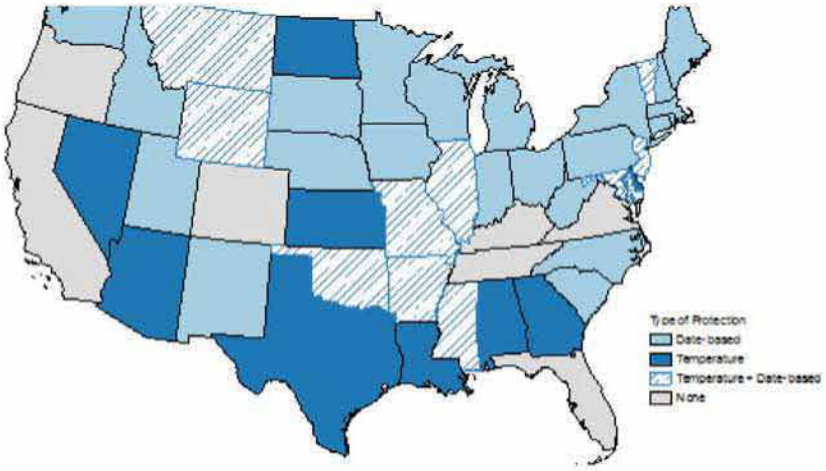
Some states require communication with public utility commissions prior to disconnection, especially for some classes of customers. For instance, Rhode Island requires a utility to file an affidavit with the Division of Utilities and Carriers prior to all disconnections. For customers with additional protections in the state, such as elderly customers or customers with small children, approval by the Division is required prior to disconnection. Disconnections during winter months in Montana and Maine similarly require permission from the Public Service Commission.

3.4. Fiscal protections

Most disconnection policies include a number of other provisions aimed at guarding against disconnection of service. These include requiring utilities to offer payment plans for customers in arrears, which 46 states and the District of Columbia require. However, fees for both disconnection and reconnection—once debt on an account has been paid—are a common practice among utilities, further burdening customers who are struggling to pay their bills. Arkansas is the only state to prohibit these fees.

Many states also allow utilities to require deposits for reconnection or for customers who have had trouble paying bills in the past. Missouri allows for deposit amounts as high as four times an average bill, but prohibits deposits for customers who have paid a specified minimum portion of a bill for 12 consecutive months. In Mississippi, deposits are limited to the amount of an average monthly bill and are also required to be waived in narrow, specified circumstances. In New Jersey, deposits are prohibited for low-income customers during winter months, while in other months, deposits are not required to be paid in advance of reconnection and are billed instead.

A small number of states offer other fiscal protections. Four states require a minimum level of arrearage before a disconnection can occur, although in New Hampshire this protection is limited to winter months. Nevada prohibits disconnections for arrearages less than $50 (or $100 in the case of a combined gas and electric utility), while New Jersey



Panel A. Cold Weather Protections

Panel B. Hot Weather Protections

Fig. 1. State with Disconnection Policies for Extreme Temperatures.
Panel A. Cold Weather Protections
Panel B. Hot Weather Protections

requires either a minimum arrearage of $100 or a three-month delinquent account prior to disconnection.

4. Gaps in knowledge and protection

In this section, we review existing and emerging gaps in state protection policies, and highlight specific areas that state policy could be improved. As part of this discussion, we illustrate the need to reform protection policies to better account for anticipated increases in extreme hot weather in the coming years due to climate change, as well as potential negative impacts from an energy system in transition. In most cases, state disconnection policies have not anticipated these emerging changes.

4.1. The need for reporting on disconnections

Evaluating the economic, health, and social implications of state policies is quite difficult due to a lack of data. Only about a quarter of states require utilities to report data regarding disconnections of service and, among those, many report little detail. For instance, Michigan requires quarterly reporting of disconnection and reconnection numbers in aggregate, but few additional details. California, in contrast, requires utilities to report on disconnections disaggregated by a number of relevant subgroups. The Federal Energy Regulatory Commission does not require utilities to report information about disconnections. As a result, national-scale and comparative analyses are difficult for researchers to undertake. A national system of reporting and greater data availability would allow researchers and legislators to develop a clearer understanding of how state policies interact with energy burden and disconnection and reconnection rates for different populations. This in turn would allow for informed policy adjustments over time.

Fuel variance between regions presents another challenge. Both gas and electricity are in gridded networks where households can be disconnected, but state policies governing disconnections do not always apply the same protections to both fuel sources. Additionally, while other heating sources are not subject to "disconnection," per se, an inability to pay for more oil, propane, or wood, can similarly leave people without heat or relying on dangerous heating methods. State policies need to ensure equitable customer protections regardless of heating fuel source.

Compounding uncertainty around disconnections is that utilities may engage in voluntary practices that are more protective than state laws require. For instance, when the regulatory protections are relatively stringent for any disconnections taking place during cold-weather months, a utility may choose not to pursue any disconnections during those months due to the administrative burden. Accessible data on shutoffs for each utility would help to identify relevant variations in utility-initiated policies that may protect customers more effectively. Furthermore, in many cases, municipal electric utilities and rural electric co-operatives are not subject to the same regulations as investor-owned utilities.

While some utilities may voluntarily offer greater protections, there is no certainty that utilities fully comply with state policies. In most cases, state policies function as a complaint-based system, where the onus is on an aggrieved customer to report illegal actions or billing disputes to a public utilities commission. Very few policies place an affirmative duty on utilities to prove compliance with state policies. The few exceptions are during periods of enhanced protection, for instance during cold weather months, when utilities may be required to file an affidavit or obtain permission prior to initiating a disconnection. Requirements for regular, detailed reporting about disconnections and reconnections would likely encourage policy compliance, and provide clearer information on the performance of specific utilities.

As shown in the preceding section, many state policies contain various gaps where customers are not protected. Some of these are intentional, for instance, where a certain additional layer of protection is afforded only to low-income or elderly customers because they are presumed to have the greatest need. However, other gaps are likely unintended. For instance, with protections for extreme weather, date-based protections tend to be relatively minor, perhaps only requiring extra notice requirements, while temperature-based protections tend to be absolute. In this situation, a utility may be prevented from disconnecting service during a particularly cold or hot spell, but it likely need only wait a few days before temperatures return to milder levels, even if another period of dangerous weather is impending.

4.2. Impacts of a changing energy system

In the context of an energy system in transition, there are a number of factors that increase the urgency of reducing energy burden and numbers of utility disconnections. Changes in energy regulation, including potential carbon pricing and a transition to more renewable energy sources, may increase electricity rates in many areas. Changing rate structures are another area of concern that may compound energy burden and disconnections. In particular, to better incorporate time-variable renewable energy resources, many utilities are exploring or piloting time-of-use electricity rates. With this rate structure, electricity rates differ throughout the day based in part on how much it costs to produce energy at that particular time, as well as other system constraints. Low-income or other vulnerable customers may be unable to shift their consumption patterns in response to these price signals as easily as other households, potentially leaving them worse off under such a rate structure (Faruqui and Palmer, 2011). Adequate protections, or the option to pay a time-of-use rate or a traditional flat rate bill, whichever is lower, are possible ways to address this (Thompson, 2016).

The advent of smart meters brings another concern, as customers may be disconnected remotely with no utility employee visiting a household to attempt to notify a customer, answer questions, or direct the customer to resources. Consumer advocates argue that adequate protections must remain in place to protect vulnerable customers, such as safeguards against disconnections, payment plans, or programs to manage arrearages and forgive debt (Howat and McLaughlin, 2012).

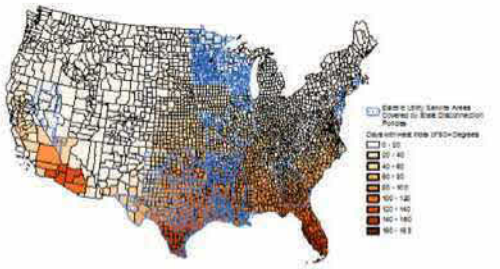
4.3. Impacts of a warming planet

Protections from heat are an area of state disconnection policies that merit greater attention. Compared to protections from extreme cold, these policies are limited in scope and number; about one third as many states have heat-protection policies as have cold-protection policies, and none have date-based heat-protection policies.

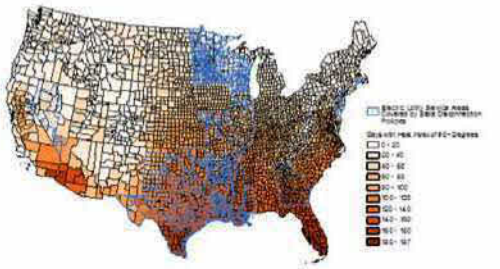
Future climate predictions vary based on projected greenhouse gas (GHG) emissions scenarios, but the number of hot days is predicted to increase in all scenarios, including the RCP 4.5 and RCP 8.5 representative concentration pathways (Hayhoe et al., 2018). Additionally, high-temperature extremes are expected to increase more than average temperatures (Hayhoe et al., 2018). Heat waves are also projected to be more frequent, more intense, and longer lasting (US EPA, 2016).

To illustrate the gaps in heat-based protections of current state policies, Fig. 2 overlays the service territories of electric utilities covered by existing state regulations with county-level data on heat index days. Specifically, using estimates published in Dahl et al. (2019), we show historical data (based on 1971–2000) of the number of days with a heat index of at least 90 degrees F (Panels A–C) and separately of at least 100 degree F (Panels D–F), as well as forecasts for midcentury (2036–2065) under an RCP 4.5 and RCP 8.5 scenario. These maps clearly highlight that the patchwork of current policies are not well-aligned with many areas of the country that are expected to see increases in extremely hot weather but have no protections.

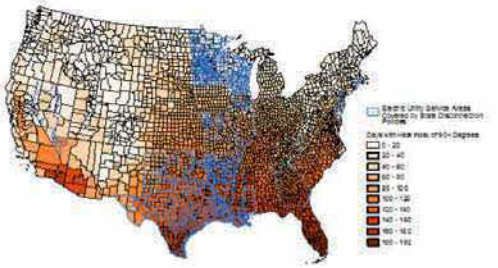
An increase in hot days and heat waves will put many more people at risk of heat-related illness and death. The most vulnerable people are the elderly and young children, as well as people with underlying health conditions like cardiovascular disease. The full impact of heat tends to be undermeasured, since medical examiners may not report heat as a cause if the death or illness did not occur during a publicized extreme heat event. Nevertheless, the Environmental Protection Agency (2016) reports that heat is the leading weather-related cause of death in the U. S., causing an estimated 1300 deaths a year. A similar number of deaths occur due to exposure to cold each year (US EPA, 2020). While increasing average temperatures are expected to reduce the total number of cold-related deaths, the increase in heat-related deaths is expected to outpace those gains in most regions (US EPA, 2016). Increased heat will also lead to greater energy demand from air conditioning, which will further compound challenges with energy burden.



Panel A. Historical



Panel B. RCP4.5 Scenario



Panel C. RCP8.5 Scenario

Fig. 2. Historical and Projected 90+ Degree (F) Heat Index Days with Electric Utility Service Areas Covered by State Disconnection Policies.
Panel A. Historical
Panel B. RCP4.5 Scenario
Panel C. RCP8.5 Scenario

5. Discussion

In its Sustainable Development Goals framework, the United Nations calls for "access to affordable, reliable, sustainable and modern energy for all" (United Nations, 2020). Similarly, energy justice scholars and consumer advocates have called for a fundamental right to enough energy to meet one's basic needs (Hernández, 2015; Franklin and Kurtz, 2017). This call for energy as a basic right, especially in the context of more developed countries, typically includes both affordable rates and uninterrupted service.

While state protections against disconnections do not reach this aspiration, a more uniform and robust set of protections would still help protect many vulnerable people. Drawing on past work (Franklin and Kurtz, 2017; Verclas and Hsieh, 2018), and our analysis of best practices from existing state policies, we have identified six specific areas for improvement.

First, protections against extreme temperatures should apply to all customers and not be restricted to subgroups. Date-based protections that include an absolute prohibition against disconnection would address the protection gap where a disconnection occurs immediately prior to exposure to dangerous temperatures. Temperature-based protections could still play a role in periods outside the dates of seasonal protection, but date-based protections are preferable during winter and summer. Protection against extreme heat days is an issue of growing importance due to a warming climate, and no state currently provides date-based protections against disconnections in summer.

Second, vulnerable social groups would benefit from additional layers of protection throughout the year. Those who require electricity for medical equipment or for medical reasons should be protected against shutoffs indefinitely, with renewals of a certificate of need from a medical professional required at a reasonable interval (e.g., every 90 days). Other vulnerable groups, including the elderly, disabled, or those with small children, would also benefit from additional layers of protection, including affirmative duties on the part of utilities to identify vulnerable groups via annual and new customer surveys or to field an affidavit with a public utility commission affirming that any such vulnerabilities were taken into consideration before initiating a disconnection.

Third, states should ensure strong process protections, including multiple types of notice prior to disconnection, such as written, phone, and at least one in-person notice attempt. When a disconnection is initiated, clear instructions, possibly in multiple languages, should be left at the residence to let customers know how to obtain assistance and reconnect service. A requirement for utilities to conduct a follow up visit a day after a disconnection would help to identify unsafe situations and direct customers to needed assistance services.

Fourth, all states should prohibit disconnection and reconnection fees. While there is a cost to these activities, customers who are disconnected are least able to pay them. The use of fees can create a significant barrier to paying for arrearages and getting service reconnected, even driving displacement or homelessness (Drehobl and Ross, 2016). States should ensure that all utilities offer payment plans, as well as potential arrearage forgiveness programs for payment plan compliance. Moreover, for those struggling to pay their energy bills, utilities should help to connect customers with bill-paying assistance programs and other social services.

Protections against disconnection—whether seasonal, due to a medical condition, or simply general protections—could be contingent on partial payment or a customer entering a payment plan, but this should only be done with a robust process to ensure adequate protections and equitable access. For instance, total payments could be linked to a percent of income, as is the case in Colorado's Electric Service Low-Income Program. In this program, average energy bills for eligible customers may not exceed six percent of income when electricity is the primary heating source or three percent of income when it is not.

Fifth, in addition to better integration with social services, energy efficiency and weatherization programs should play a prominent role in reducing energy burden. While programs can protect against shutoffs during particularly hazardous periods of the year or for the most vulnerable of customers, reducing total energy demand will lead to greater benefits, such as reduced energy burden for low-income and other vulnerable households. This would reduce the risk of disconnections, and thereby mitigate the health and safety risks that often follow loss of service. Greater investment in energy efficiency programs also have community and societal benefits, ranging from the creation of local jobs to reduction of energy demand and related GHG emissions (Drehobl and Ross, 2016).

Sixth, states should require utilities to regularly and publicly report disconnections, disaggregated for relevant population groups to allow

for detailed analysis. Policies should explicitly embrace reductions in disconnections as a goal, require regular look-back periods aimed at reviewing program efficacy, and encourage program modification based on public utility commission analysis. Finally, disconnection policies should be expanded to include municipal and co-operative utilities in states where this is not the case.

The adoption of these reforms would move the United States closer to providing a universal right of uninterrupted, affordable, and sustainable energy, though fully achieving this right would require the cessation of disconnections altogether. More broadly, proactive policies that address underlying reasons for disconnections and better integrate energy efficiency programs, housing policies, and customer payment assistance programs will help move society towards a more just energy future.

Declaration of Competing Interest

The authors report no declarations of interest.

Acknowledgements

This research was funded by the Alfred P. Sloan Foundation and the Indiana University's Environmental Resilience Institute. Any errors or misrepresentations are exclusively the responsibility of the authors.

References

Berry, C., Hronis, C., Woodward, M., 2018. One in Three U.S. Households Faces a Challenge in Meeting Energy Needs. U.S. EIA. https://www.eia.gov/todayinenergy/detail.php?id=37072.

Bouchama, A., 2004. The 2003 European heat wave. Intensive Care Med. 30, 1–3.

Dahl, K., Licker, R., Abatzoglou, J.T., Declet-Barreto, 2019. Increased frequency of and population exposure to extreme heat index days in the United States during the 21st century. Environ. Res. Commun. 1, 075002.

Drehobl, A., Ross, L., 2016. Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities. ACEEE.

Faruqui, A., Palmer, J., 2011. Dynamic pricing of electricity and its discontents. The Brattle Group.

Franklin, M., Kurtz, C., 2017. Lights Out in the Cold: Reforming Utility Shut-off Policies As If Human Rights Matter. NAACP.

Hayhoe, K., et al., 2018. Our changing climate. NCA4 2, 72–144.

Hernández, D., 2015. Sacrifice along the energy continuum: a call for energy justice. Environ. Justice 8, 151–156.

Hernández, D., 2016. Understanding 'energy insecurity' and why it matters to health. Soc. Sci. Med. 167, 1–10.

Hernández, D., Bird, S., 2010. Energy burden and the need for integrated low-income housing and energy policy. Poverty Public Policy 2, 5–25.

Howat, J., McLaughlin, J., 2012. Rethinking Prepaid Utility Service: Customers at Risk. National Consumer Law Center.

Klinenberg, E., 2003. Heat Wave: A Social Autopsy of Disaster in Chicago. The Univ. of Chicago Press.

Popovich, N., Flavelle, C., 2019. Summer in the City Is Hot, but Some Neighborhoods Suffer More. The New York Times. https://www.nytimes.com/interactive/2019/08/09/climate/city-heat-islands.html.

Rey, G., et al., 2009. Heat exposure and socio-economic vulnerability as synergistic factors in heat-wave-related mortality. Eur. J. Epidemiol. 24, 495–502.

Romanowsky, E., et al., 2019. The role of stratospheric ozone for Arctic-midlatitude linkages. Sci. Rep. Ist. Super. Sanita 9, 7962.

Ross, L., Drehobl, A., Stickles, B., 2018. The High Cost of Energy in Rural America: Household Energy Burdens and Opportunities for Energy Efficiency. ACEEE.

Thompson, A., 2016. Protecting low-income ratepayers as the electricity system evolves. At. Energy Law J. 37, 265–306.

United Nations, 2020. Sustainable Development Goal 7. Sustainable Development Goals Knowledge Platform (UN, accessed on 26 June 2020). https://sustainabledevelopment.un.org/sdg7.

US EPA, 2016. Climate Change Indicators in the United States 2016, fourth edition. US EPA, p. 2016.

US EPA, 2020. Climate Change Indicators: Cold-related Deaths. accessed 26 June 2020. US EPA. https://www.epa.gov/climate-indicators/climate-change-indicators-cold-related-deaths.

Verclas, K., Hsieh, E., 2016. From utility disconnection to universal access. Electr. J. 31, 1–8.

Whitman, E., 2019a. On 107-degree Day, APS Cut Power to Stephanie Pullman's Home. She Didn't Live. Phoenix New Times. https://www.phoenixnewtimes.com/news/aps-cut-power-heat-customer-dead-phoenix-summer-shutoff-11310515.

Whitman, E., 2019b. On 107-degree Day, APS Cut Power to Stephanie Pullman's Home. She Didn't Live. Phoenix New Times. https://www.phoenixnewtimes.com/news/aps-cut-power-heat-customer-dead-phoenix-summer-shutoff-11310515.

Matthew Flaherty is a member of City Council for Bloomington, IN. He holds a J.D. from Indiana University's Mauer School of Law, and a Master of Public Affairs and Master of Science in Environmental Science from the O'Neill School at Indiana University.

Sanya Carley is a Professor and Director of the Masters of Public Affairs programs at the O'Neill School of Public and Environmental Affairs at Indiana University. Her research focuses on electricity and transportation policy, energy justice and a just transition, and public perceptions of energy infrastructure and technologies.

David Konisky is a Professor at the O'Neill School of Public and Environmental Affairs at Indiana University. His research and teaching focuses on U.S. environmental and energy policy, with particular emphasis on regulation, federalism and state politics, public opinion, and environmental justice.

PROTECTING SERIOUSLY ILL CONSUMERS FROM UTILITY DISCONNECTIONS

WHAT STATES CAN DO TO SAVE LIVES NOW

NCLC National Consumer Law Center
Fighting Together for Economic Justice

February 2021

National Consumer Law Center
Fighting Together for Economic Justice

ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

NCLC.ORG

ABOUT THE AUTHORS

Olivia B. Wein has been an attorney at the National Consumer Law Center (NCLC) for over 20 years. Olivia focuses on policies and programs that protect low-income consumers' access to essential utility services, including water, energy, and telecom. She advocates for a strong federal Lifeline telecommunications program and other programs and policies that will close the broadband divide. Olivia also works on the Low Income Home Energy Assistance Program (LIHEAP), Weatherization programs and intervenes in federal and state utility commission proceedings in matters affecting low-income utility consumer programs and protections. She is co-author of NCLC's *Access to Utility Service*.

Charlie Harak is senior attorney for energy and utilities issues at the National Consumer Law Center. He represents consumers before regulatory agencies, testifies at legislative hearings, and provides legal and policy counsel to low-income advocates, legal services lawyers, and government officials. He also devotes much of his time to training lawyers, advocates, and front-line social services staff regarding the rights of utility customers, and contributes to NCLC legal manuals and publications. Much of Charlie's work also focuses on energy efficiency issues, including federal appliance efficiency standards and advocating for larger and smarter energy efficiency investments in affordable multifamily housing, and climate change.

ACKNOWLEDGEMENTS

The authors thank current and former NCLC colleagues Jen Bosco, Carolyn Carter, Ana Girón Vives, Andrew Pizor, John Howat, Jan Kruse, and Stephen Rouzer, former interns Mark Byrne and Allison Colton, and Massachusetts attorney Emily Green Caplan for their invaluable assistance with this report. The authors also thank the Annie E. Casey Foundation for its support but acknowledge that the findings and conclusions presented in this report are those of the authors alone, and do not necessarily reflect the opinions of the Foundation.

PROTECTING SERIOUSLY ILL CONSUMERS FROM UTILITY DISCONNECTIONS

WHAT STATES CAN DO TO SAVE LIVES NOW

TABLE OF CONTENTS

APPENDICES

TABLES

BOXES

EXECUTIVE SUMMARY

Each year, millions of utility customers have their service terminated for non-payment. Many of those are low-income households in which someone is seriously ill. In extreme cases, termination of service to those households has led to death. Much more frequently, loss of electric or gas service makes existing illnesses or conditions worse. Utility service is often essential, for example, for refrigerating medications, powering needed medical equipment, or simply maintaining adequate temperature in the home. Disconnection from utility service is especially dangerous for vulnerable populations: the very ill and the very young and old, in particular.

In each of the 50 states and in D.C., utility commissions set the rules regarding when and how the companies they regulate can terminate vital electric and gas service for non-payment. As this report details, some states provide strong protections against termination of households where someone is seriously ill, while other states provide very little or no protection.

These differing rules can, quite literally, mean the difference between life and death. In 2019, an elderly customer with heart disease and diabetes was disconnected due to having an arrearage of $51; she died. In 2018, an elderly customer dependent on an oxygen machine died when her electricity was disconnected, despite frantic efforts of family members to alert the company to the customer's fragile status.

Strong serious illness protection rules can prevent tragedies like these from happening. Almost all the states already have some sort of serious illness protection in their statutes or public utility rules. However, a few states—Alabama, Alaska, Louisiana, and North Carolina—have *no* enforceable restrictions on terminating utility service for seriously ill customers. Moreover, many of the existing state laws and regulations are overly narrow, create protections that are difficult to access and not widely known, or provide for an overly short period of protection.

Recommendations

1. **Broad Scope:** Eligibility for the protection should be broad and should include anyone with a serious illness whose health and safety would be at risk by involuntary disconnection of energy service.
2. **Diversity of Certifiers:** A wide range of entities should be allowed to certify serious illness, and the utility company should be required to abide by their certification.
3. **Prompt Initiation and Adequate Duration of Protection:** Seriously ill customers must be able to obtain the protection against disconnection promptly, and the duration of the protection should correlate with the customer's health needs.

4. **Adequate Notice and Easily-Accessible Process:** Utilities should be required to notify customers of the serious illness protection rules, with an explanation of a clear and simple application procedure, and in multiple languages as appropriate to that utility's service territory.
5. **Affirmative Outreach:** Utilities should act affirmatively to identify medically fragile customers and avoid terminating their service.
6. **Monitoring and Enforcement:** Utilities should be required to collect, report, and analyze data, at a granular level (e.g., by zip code), to monitor the administration of the protections.

INTRODUCTION

The Importance of Strong Serious Illness Protection Rules to Protect the Health of Vulnerable Consumers

On July 5, 2018, the Public Service Electric and Gas Company of New Jersey shut off the power to 68-year-old Linda Daniels, who depended on an electric-powered oxygen tank, because she had a $51 arrearage. She died shortly thereafter.[1]

On September 7, 2018, a day on which temperatures soared above 100° F, Arizona Public Service cut off the electric service to 72-year-old Stephanie Pullman, based on an overdue balance of $177. A week later, she was found dead in her apartment. The coroner found that her death was caused by "environmental heat exposure in [a] setting of significant cardiovascular disease."[2]

These tragedies are predictable when utility service is terminated for seriously ill customers. Utilities are not only a necessity of modern life,[3] but loss of utility service can pose a direct threat to the health and well-being of those living in a home where service is terminated.

The Health Risks Created By Termination of Utility Service

The health of any person can be endangered when exposed to prolonged periods of extreme heat or extreme cold. The danger is much more pronounced for consumers who have a serious illness, are medically vulnerable, rely on medical equipment that requires electricity, or need medications that must be refrigerated.

Cold temperatures affect the cardiovascular and respiratory systems and can suppress immunological reactions. This can lead to illness, such as respiratory infections, or even death. Overly warm temperatures have similarly negative effects on health, especially among elderly populations. Extreme heat can easily lead to death.[4]

Electricity and natural gas disconnections can exacerbate current health hazards or lead to new ones. Cognitive disabilities may hinder a person from taking steps to protect their own health and safety if electricity or natural gas service is disconnected.[5] Many consumers rely on electricity to keep their medications properly refrigerated or for medical equipment such as oxygen machines, hospital beds, or electric wheelchairs.

Even when loss of electricity or natural gas does not create an immediate risk to life, it can have serious negative health consequences. Low-income consumers with a serious illness are at heightened risk of poor health outcomes when they are forced to divert scarce funds for other essential needs to head off involuntary utility terminations. This condition is referred to in the academic literature as "energy insecurity." While the Low Income Home Energy Assistance Program (LIHEAP) helps to pay the energy bills of low-income households, it is not an entitlement program and is

chronically underfunded relative to the need. Recipients of LIHEAP report foregoing medicine, medical care, and food to pay for essential heating service in the winter.[6]

For many low-income households, energy insecurity can lead to "difficulty accessing health care, fear of losing housing, and living in potentially unsafe buildings and neighborhoods."[7] Residents of energy-insecure households consume 10% fewer calories and lose 10% more weight during the winter season.

Young children in households experiencing energy insecurity are also more likely to face housing and food insecurity. These children are more likely to be in only fair or poor health, be hospitalized at least once after birth, and "be at risk for developmental delays."[8]

ABOUT THIS REPORT

This report is a resource for state policymakers and consumer advocates seeking to improve the statutes and rules in their states that protect against utility termination when a household member is seriously ill. It starts with an articulation of the principles that should guide the creation of these policies. It then addresses the question of the specific provisions that states should adopt to implement these principles, and highlights examples that may serve as models. It concludes with recommendations for the states.

The statutes and rules cited in this report are those that apply to the investor-owned electric and natural gas companies that are under the jurisdiction of the state utility commission (typically called the Public Utility Commission, Public Service Commission, Department of Public Utilities, or something similar). In some locales, gas or electricity is provided by a publicly-owned municipal utility or a membership-owned utility cooperative. State utility commissions usually do not have authority to regulate these entities, but their governing bodies—the local government or agency, or cooperative board—have the authority to adopt serious illness protections. This report can serve as a guide to framing those protections as well as those adopted by public utility commissions.

How Serious Illness Protection Rules Work

Alabama, Alaska, Louisiana, and North Carolina have no enforceable restrictions on terminating utility service for seriously ill customers.

Serious illness protection rules are the primary way that states seek to prevent the health risks caused by terminating utility service to a household that includes a seriously ill individual. Typically, these rules prohibit termination of utility service when a health care professional certifies that an individual in a low-income household has a serious illness. How long the prohibition lasts and whether it can be renewed varies widely from state to state. Often the household will be required to enter into some sort of payment plan for the past-due bill in order to obtain the protection against termination.

Most states have some sort of serious illness protection in their statutes or public utility rules. However, a few states—Alabama, Alaska, Louisiana, and North Carolina—have *no* enforceable restrictions on terminating utility service for seriously ill customers.[9] Moreover, many of the existing laws and regulations are overly narrow, create protections that are difficult to access and not widely known, or provide for an overly short period of protection. There is much more than can and should be done.

Principles for a Strong Serious Illness Rule

A strong serious illness protection rule should meet six main principles:

1. **Broad Scope:** Eligibility for the protection should be broad and should include anyone with a serious illness whose health and safety would be put at risk by involuntary disconnection of energy service.

   A state's definition of "serious illness" should include a broad range of physical, mental, and emotional conditions for customers who cannot afford to pay their energy bills.

2. **Diversity of Certifiers:** A wide range of entities should be allowed to certify serious illness, and the utility company should be required to abide by their certification.

   To reflect the limited access to health care and health care providers that many low-income consumers encounter, the persons who can certify serious illness should include a broad range of medical professionals and others who can attest to the customer's health status: for example, medical doctor, nurse practitioner, physician assistant, psychiatrist, psychologist, and local board of health. The judgment of the certifying professional should be conclusive unless challenged at the utility commission by the utility.

3. **Prompt Initiation and Adequate Duration of Protection:** Seriously ill customers must be able to obtain the protection against disconnection promptly, and the duration of the protection should correlate with the customer's health needs.

   Serious illness protection rules must allow the customer to obtain protection (whether a reconnection or a suspension of a termination) via a phone call, with a health professional's certification of a serious illness to be submitted within an approved time frame (for example, within 7 days).

   The initial disconnection protection should last at least 30 days and should be renewable for the duration of the medical condition.

4. **Adequate Notice and Easily-Accessible Process:** Utilities should be required to notify customers of the serious illness protection rules, with an explanation of a clear and simple application procedure.

   Utilities should notify customers of the serious illness protection rules at initiation of service and whenever collection and disconnection notices are sent. Notices should be made available in multiple languages, where relevant to the territory.

To simplify procedures, states should adopt a standard form for serious illness certification.

5. **Affirmative Outreach:** Utilities should act affirmatively to identify medically fragile customers and avoid terminating their service.

   States should ensure that company service representatives and field agents are trained to solicit information regarding any serious illness in the household, and that they will postpone a termination pending certification of the illness.

6. **Monitoring and Enforcement:** Utilities should be required to collect, report, and analyze data, at a granular level (e.g., by zip code) to monitor the administration of the protections.

CRAFTING A STRONG SERIOUS ILLNESS PROTECTION POLICY

1. Eligibility for the protection should be broad and should include anyone with a serious illness whose health and safety would be put at risk by involuntary disconnection of energy service.

Eligibility for serious illness disconnection protection should be broadly defined to include low-income customers and members of their household whose health or well-being could be compromised by disconnection of electric or natural gas service due to an inability to pay the utility bill.

Eligibility for the protection should be broad and should include anyone with a serious illness whose health and safety would be put at risk by involuntary disconnection of energy service.

Deciding on the breadth of a serious illness protection involves a trade-off between avoiding serious harm to households that would be terminated under narrow rules versus the potential loss of revenue to the utility under broader rules. As real-life examples demonstrate, lives may be on the line when terminations occur, and health and well-being are quite frequently at risk. Utility commissions should err on the side of protecting lives and health. Utilities run the risk of litigation and reputational harm if the customer needs to be hospitalized or dies due to disconnection of essential utility service while seriously ill.

The National Consumer Law Center (NCLC) recommends that states use expansive criteria, making the protection applicable whenever a medical or other professional familiar with the household member's medical condition certifies that there is a serious illness or medical condition which creates a risk of harm from disconnection of utility service. The definition should be broad enough to include conditions that would be aggravated by a loss of utility service, not just those that would result in an immediate threat to the customer's life. It should include a broad range of medical conditions, as loss of utility service can quickly lead to this range of bad outcomes. Appendix A

summarizes the eligibility criteria for disconnection protections for each of the 50 states and the District of Columbia.

A number of states have an appropriately broad definition of what constitutes a serious illness that merits protection. Some simply require that there be a "serious illness," without further description. In practice, the question whether there is "serious illness" that gives rise to the protection is left to the judgment of the professional who submits the letter or serious illness certification form.

Massachusetts provides a good example of a strong serious illness protection that covers a broad range of serious illnesses. The state's regulation uses simple language that leaves it up to the medical professional to determine who has a "serious illness":

> *No company may shut off or refuse to restore utility service to the home of any customer if:*
> *(a) It is certified to the company:*
> .....
> *1. That the customer or someone living in the customer's home is seriously ill.*[10]

Idaho,[11] Maryland,[12] and Pennsylvania[13] are other examples of states whose protections against termination apply to a broad range of individuals who are seriously ill. On the other hand, some states, such as Florida, apply their protection to much more limited situations, for example, to situations where the patient is dependent on electrically-powered medical equipment to avoid loss of life or immediate hospitalization. Such a narrow rule places too many low-income, seriously-ill households at risk.

Of course, the scope of the definition of "serious illness" is only part of the picture. If the state's substantive protections are weak, a broad scope will not do much good. In addition, in some states with broad definitions of serious illness, some aspects of the protection may vary depending on whether the illness is life-threatening.[14]

Recommendation

State serious illness protections should apply to any household that includes a person with a serious illness. Rather than attempting to define "serious illness" more specifically, states should rely on the certifying professional's judgment about whether the condition is a serious illness.

2. A wide range of entities should be allowed to certify serious illness, and the utility company should be required to abide by their certification.

Serious illness protection rules require a health care provider or other professional to submit a certification of the customer's condition. A well-designed serious illness protection rule allows a broad array of persons, including licensed physicians, osteopaths, registered nurses, physician assistants, certified nurse midwives, public

A well-designed rule allows a broad array of persons to certify serious illness and mandates the utility to abide by the certification (see Massachusetts as a good example).

health officials, and behavioral health care providers to submit this certification.

A broad definition of the health care providers who can certify a physical or mental health condition that will trigger protections is especially appropriate for households that have limited access to health care. Many of these are the same low-income households that are likely to have a seriously ill household member and be unable to pay their utility bills—exactly the households that the regulation should be targeting, rather than excluding. Mental health practitioners, public health agencies, and social service agencies should all have authority to certify a serious illness. In particular, public health and social service agencies may already be providing services to households in crisis that cannot afford medical care, so they will be knowledgeable about the customer's condition.

Some states, such as Nebraska,[15] give certification authority only to duly licensed physicians, a far too narrow approach. Arkansas is an example of a state that takes a more realistic approach, allowing certification by a physician, nurse, nurse practitioner, physician assistant, and public or private agency providing physical or mental health care services.[16] Wisconsin allows certification by a physician or a public health, social services, or law enforcement official.[17]

To reduce the burden of preparing the certification, states should provide a sample certification form. Appendix F includes samples of certification forms and certification requirements from several states. The certification form, and the state's rules, should not require detailed information about the specific nature of the household member's illness, which is highly private, sensitive information. The certification should be limited to a general statement that the patient has a medical condition or—if the state's rules so require—relies on medical equipment, and that disconnection of electricity or natural gas service would potentially endanger the person's health or meets other criteria.

Massachusetts, however, takes an alternative approach, which NCLC urges other states to consider. In practice, some individual companies provide certifying practitioners with forms they have drafted and which are therefore deemed sufficient from the company's perspective. However, the serious illness regulations simply require that the serious illness be certified by a doctor, nurse practitioner, physician assistant, or board of health. There is no **required** form. Thus, in urgent situations, the certifying practitioner can draft a simple letter and immediately fax or mail it to the company. This avoids the delay that can occur when the company offers to first mail the form to the certifying practitioner, slowing down the certification process.

Utility regulators must also specify that the medical professional's determination governs. The utility should not be allowed to second-guess the medical professional's judgment about whether termination of utility service would create a risk to the customer's health. If the utility wants to contest the certification, it should ask the state regulator to investigate it, and, in the meantime, should abide by the duty not to terminate utility service. Maine and Massachusetts are examples of states that have such provisions.[18]

Recommendations

Who can certify. The persons who can certify serious illness should include a broad range of medical and social service professionals and others who can attest to the health status of the customer: e.g., physicians, physician assistants, osteopaths, nurse practitioners, nurses, mental health professionals, board of health or public health officials, and social service agencies.

No second-guessing. Utilities should not be allowed to second-guess the practitioner's certification, but should be limited to asking the state regulator to resolve any questions about the certification's legitimacy or sufficiency.

Form of certification. States should provide a sample certification form, and should minimize the amount of specific information about the customer's medical condition that must be provided. However, if the certifying practitioner cannot quickly access the form, a letter that contains the required information should be acceptable.

3. Seriously ill customers must be able to obtain the protection against disconnection promptly, and the duration of the protection should correlate with the customer's health needs.

A strong serious illness protection rule should require the protection against termination to be implemented immediately upon a call by a consumer or health care professional notifying the utility that there is a serious illness/medical situation. The rule should allow the written certification of the serious illness to be submitted within a reasonable period of time following the phone call, recognizing that busy medical practices need time to process the certification. NCLC recommends a 7- to 10-day time frame. Appendix B contains a chart of states that have clear rules regarding the process for initial phone calls and the follow-up certification.

States should not only require that any termination of utility service be stopped for a household that includes a seriously ill individual, but should also require prompt reconnection if the household was already disconnected. The rules should require waiver of

Seriously ill customers must be able to obtain the protection against disconnection promptly, and the duration of the protection should correlate with the customer's health needs (see Massachusetts rule for model language).

any reconnection fee. Appendix C gives examples of states with prompt reconnection rules.

The rule should set forth a clear and adequate time frame for the initial duration of the protection. Given the difficulties seriously ill customers are likely to face in managing their affairs, and the burden upon medical professionals of having to resubmit certification papers, this initial period should be at least 30 days.

Most states' serious illness protections meet this standard. More than a dozen states provide a disconnection protection of 60 days or more,[19] and at least three of these states—Massachusetts, Minnesota, and Montana—provide for an initial 180-day period of protection.[20] Almost 20 states provide a 30- to 59-day protection.[21] However, 10 states provide less than a 30-day protection, and a few either leave the protection period up to the discretion of the utility or do not specify the initial period. Given that a majority of states mandate an initial period of 30 days or more, there is strong precedent for states to mandate at least a 30-day initial period.

Serious illness protection rules should also address renewal of the initial period of protection. About three dozen states have clear rules governing renewals. These rules vary both as to the length of the renewal period (e.g., as short as 15 days and as long as 6 to 12 months) and the number of renewals permitted (e.g., only for a limited number of times, or for as long as the illness lasts, as certified by the appropriate medical or other professional). Massachusetts places no limits on the number of renewals.[22] Connecticut places no limit on the number of renewals for life-threatening illnesses, and Michigan has no limit for critical care customers.[23] Appendix D provides details about the renewal provisions in these states, and examples of several other states' policies. Massachusetts' rule is a model for the states with respect to the promptness of the protection, its initial duration, and the ability to renew it.

Recommendations

Immediate implementation of an initial protection of at least 30 days. The protection against termination—including a requirement of prompt reconnection if the household's utility service has been terminated—should go into effect immediately upon receipt of a phone call from the customer or a certifying professional, with a requirement to submit a written certification soon (7 to 10 days) thereafter. The initial period of protection should be at least 30 days, and longer if specified in the letter from the certifying entity.

Renewal. The initial protection should be renewable for the duration of the medical condition, as long as the certifying professional periodically attests that the illness is continuing. Any renewal period should be at least as long as the initial period of protection.

4. *Utilities should be required to notify customers of the serious illness protection rules, with an explanation of a clear and simple application procedure.*

For serious illness protections to be effective, consumers must be aware of them. Often a state's serious illness protection is not well publicized and may be underutilized. Since serious illness protection rules typically put the onus on consumers to notify the utility of a serious illness to obtain disconnection protection, the protections will be effective only if consumers learn of them and how to apply.

Utilities should notify new consumers of these protections at the time service is initiated and annually thereafter, in languages appropriate to the company's service territory. They should ensure that customer service representatives and field agents are well-trained regarding these protections, and include information about these protections in collection and disconnection notices sent to consumers. Any post-disconnection correspondence should also contain information about the serious illness protection rule. All of these communications should include simple, clear instructions about how consumers can avail themselves of the protection.

Michigan Retiree Dies after Natural Gas is Terminated

John Skelley, 69, a retired autoworker in Flint, Michigan, died on January 31, 2015 from hypothermia, 11 days after the natural gas for his home was disconnected for non-payment. Mr. Skelley also suffered from chronic heart disease, esophagogastric cancer, and bronchopneumonia, all of which contributed to his death. If the utility company had been notified of these medical conditions, Mr. Skelley would have qualified for the state's medical exemptions from utility termination.

Source: "Hypothermia caused man's death after utility shut-off, autopsy finds," *Lansing News*, May 1, 2015.

Connecticut is a good example of a state with strong requirements for notice to consumers. It requires every termination notice to "plainly indicate that the utility company may not terminate residential utility service to the home of any customer during such time as any resident therein is seriously ill."[24] In addition, utilities must give customers a summary of consumer rights, including the serious illness protections, when service is initiated and annually thereafter.[25] Other states that require routine disclosure of serious illness rights include Michigan, Montana, New York, Rhode Island, Tennessee, Texas, and Wisconsin.

Connecticut is a good example of a state with strong requirements for notice to consumers.

Pennsylvania requires a particularly proactive effort on the part of the utility to ensure that customers know of the protection. The disconnection notice must include a medical certificate notice. At least three days before the scheduled termination, the utility must attempt to contact the customer or a responsible adult occupant by telephone, in person, or, with the customer's consent, electronically. If the utility succeeds in making contact, it must inform the customer of the serious illness protection,

State utility commissions should require utilities to provide information about the serious illness protection in languages other than English that are spoken by substantial numbers of their customers.

among other things. In addition, immediately before performing the termination, the utility employee assigned to that task must make another attempt, at the customer's residence, to contact the customer, and must not proceed with the termination if there is evidence that a serious illness or medical condition exists. If the customer contacts the utility after the issuance of the initial termination notice but before the actual termination, the utility must fully explain the serious illness protection.[26]

Pennsylvania and Maine also require a post-termination notice. In Maine, this notice must include an information packet about the serious illness protection.[27] In Pennsylvania, immediately after service is terminated the utility must post a notice about the serious illness protection at the home or deliver it personally to a responsible adult occupant.[28] Appendix E provides more examples of state notice requirements for serious illness protection rules.

Consumers with limited English proficiency (LEP) are particularly vulnerable to lack of awareness about serious illness protections where utility information is provided only in English. State utility commissions should require utilities to provide information

TABLE 1 **Examples of States with In-Language Notice of Serious Illness Protection**

STATE	CITATION	SUMMARY
Colorado	*4 Colo. Admin. Code §§ 723-3:3408 (d) (electric); 4 Colo. Admin. Code § 723-4:4408 (d) (gas).*	English and specific language(s) where 10% speak a language other than English.
Connecticut	*Conn. Agencies Regs. § 16-3-100(c)(1)(D).*	English and Spanish if substantial number of Spanish-speaking people live in the service territory.
New Jersey	*N.J. Admin. Code § 14:3-3A.3(e).*	Upon notice of customer, notice shall be sent in Spanish.
New Mexico	*N.M. Admin. Code § 17.5.410.23, -.29, -.31, -.33, & -.42.*	Various notices regarding customer rights, availability of energy assistance/winter moratorium, and regarding termination must be in English and Spanish.
Oregon	*Or. Admin R. 860-021-0010(7).*	When service is initiated, utility must ask if customer would like notices in a language other than English. Utility must inform consumers of the translations available. Utility must annually report to the commission the number of requests for notices and summaries in non-English and the number of requests for each language.
Rhode Island	*810 R.I. Code R. pt. 10-00-1.5(D).*	Utility must include on all termination notices, in English, Spanish, Portuguese, French, and any other languages utility deems appropriate, the following statement: "This is a utility service termination notice. Translate immediately."
Texas	16 Tex. Admin. Code § 25.29(k)(4).	Disconnection notices must be in English and Spanish.

about the serious illness protection in languages other than English that are spoken by substantial numbers of their customers. (See Table 1 for examples.) The public utility commission can facilitate this practice by translating serious illness protection notices—as well as other collection and disconnection notices—into Spanish and any other non-English language spoken in service areas in the state.

Recommendation

Utilities should be required to notify customers of the serious illness protection rules when customers start service, annually thereafter, in collection and disconnection notices and communications, and in any post-disconnection communications, in both English and any other language used by substantial numbers of their customers.

5. *Utilities should act affirmatively to identify medically fragile customers and avoid terminating their service.*

Making sure that customers receive notices about serious illness protections at key points is an essential first step, but utilities should go farther and proactively seek to identify and help seriously ill customers. A grave illness is likely to impair a customer's ability even to remember an annual notice of a serious illness protection, much less to find it and take the steps necessary to initiate the protection.

A number of states have stepped up to this challenge and require utilities to take affirmative steps to identify households with seriously ill members and help them take advantage of the protection (see Table 2).

TABLE 2 **Examples of States with Special Process to Identify Medically Fragile Customers**

STATE	CITATION	SUMMARY
Arkansas	*Ark. Admin. Code § 126.03.2-6.18 (elderly & disabled).*	Utilities must attempt to identify elderly and individuals with disabilities at time of application, when customers ask if there are options for elderly or people with disabilities, and when contacting customers about disconnection.
Delaware	*26-3002 Del. Code Regs. § 3.3.6.*	Final contact: utility field agent can accept serious illness certification to stop disconnection.
New Jersey	*N.J. Admin. Code § 14:3-3A.4(c), (d).*	Utility should also make good faith efforts to determine which customers are over 65 (§ 14:3-3A.4(c)). At least quarterly, companies shall solicit information from residential customers to determine the presence of any life-sustaining equipment on the customer's premises (§ 14:3-3A.4(d)).
North Dakota	*N.D. Admin. Code §§ 69-09-02-05.1(2) (electric); 69-09-01-18.1(2) (gas).*	Utility shall send annually, as part of the October monthly bill, a preaddressed, postage-paid postcard that asks customer to identify if resident is 65 or older, or has a disability, or has an emergency medical problem.

Another best practice is to give utility field agents clear authority to stop a disconnection if they identify a medical risk to the health of a resident of the household. For example, New Mexico requires that utility employees "shall note any information from the residential customer that a person living in the residential customer's residence is seriously or chronically ill" and that a supervisor shall then either halt the termination or state in writing why it will not be delayed.[29] During cold weather, New York requires that, prior to terminating a heat-related account, field personnel must ascertain whether a serious impairment to health or safety is likely, and may not terminate except by giving advance notice and obtaining approval from the local social services commissioner.[30]

Some states impose an additional restraint by requiring utilities to notify the state commission prior to disconnection of a residence where someone has been identified as seriously ill. In some states, the utility must get the commission's prior approval (see Table 3).

Recommendations

Proactive outreach. Utilities should be required to act affirmatively to identify households with seriously ill individuals and help them invoke the serious illness protections, including through extra notification efforts and the grant of authority to field agents to stop terminations.

Public utility commission approval. States should require notice to and approval by the public utility commission before disconnection of a seriously ill customer.

TABLE 3 **Examples of States with a Requirement to Notify Commission Before Disconnection of Medically Fragile Consumer**

STATE	CITATION	NOTIFICATION REQUIREMENT
Hawaii	*Haw. Admin. Rules § 6-60-8(c)(3).*	Utility may not disconnect service to elderly or disabled customers without an advance written report to the commission, 5 days ahead of scheduled termination.
Montana	*Mont. Admin. R. 38.5.1411.*	Utility must provide notice to commission at beginning of termination process; commission may require a different payment arrangement than utility offered, or delay termination.
New Hampshire	*N.H. Code Admin. R. Ann. PUC 1205.03(b), (e).*	For medical emergency customers not on a payment plan, utility must request permission from commission to disconnect. No disconnection if demonstration of good faith effort to pay.
Oregon	*Or. Admin. R. 860-021-0410(6).*	If medical customer fails to enter into payment arrangement or fails to abide by its terms, utility must notify commission's Consumer Service Division of its intent to disconnect and reason for the disconnection. A hearing may be held to determine whether utility shall be permitted to disconnect.
Rhode Island	*810 R.I. Code R. pt. 10-00-1.4(K), 10-00-1.17.*	Utilities must obtain written approval from the Division of Public Utilities and Carriers to disconnect residences where all adults are 62 years of age or older, or where any resident is disabled.

Case Study of a Model Partnership: Maryland's Critical Needs Program

An innovative program in Maryland combines many of NCLC's recommendations to not only help sick consumers access that state's serious illness protection, but also enroll them in other energy assistance programs in an expedited and holistic manner. The Critical Medical Needs Partnership (CMNP) began as a pilot that included the Maryland Office of People's Counsel, Baltimore Gas and Electric Company, the Maryland Office of Home Energy Programs, Maryland Department of Housing and Community Development, the Fuel Fund of Maryland and the Cancer Support Foundation, medical facilities, and others. Subsequently, a state law made this program permanent and expands it throughout the state.[31]

The program recognizes that very ill consumers who have fallen behind on their utility bills may not have the capacity to research and apply for serious illness protection, negotiate reasonable payment plans, and complete applications for federal and charitable bill payment assistance, energy efficiency programs. Yet, their fragile medical conditions make them particularly susceptible to harm should they become disconnected from electricity or natural gas service.

In response, the CMNP streamlines and expedites the processes to help very sick utility customers stay connected. In developing the initial pilot, the goal was to create a system to fast-track access to the existing array of utility assistance, including repair/replacement of broken heating equipment, and consumer protections for medically fragile consumers.

CMNP is a voluntary program that trains patient "navigators," who are located in hospitals, oncology centers, and public and private assistance agencies that help seriously ill patients. A simple CMNP form was created, and a fast-track protocol was developed by the utilities and the agencies that administer low-income utility assistance programs. The CMNP provides an expedited process to stop a disconnection or quickly reconnect service for a seriously ill consumer and expedite access to other utility assistance to help keep the household connected to essential utility service. The program is housed in the Office of Home Energy Programs of the Family Investment Administration within the Maryland Department of Human Services.

The Maryland program is just one example of the type of partnership with social services and patient advocacy organizations that utilities can explore as a way of proactively identifying and protecting seriously ill customers. These partnerships can create a network of trained patient navigators to help sick patients easily access critical protections, such as the serious illness protections, to preserve access to essential utility services.

6. Utilities should be required to collect, report, and analyze data to monitor the administration of the protections.

States should track utilities' use of the serious illness protection rule to identify if the protection is being readily accessed by customers and implemented without unnecessary barriers.

Utilities should be required to collect, report, and analyze data to monitor the administration of the protections (see New Mexico rule).

New Mexico is an example of a state that requires data reporting along these lines. It requires its utilities to maintain records on the number of medical certificates received before and after termination of service; the number of instances when restoration of service took more than 12 hours from the receipt of a medical certificate; and the number of customer households known to the utility where an elderly, disabled, or other person might suffer injury or death if service were discontinued.[32]

Recommendation

States should require utilities to collect, report, and analyze data regarding the implementation of their serious illness rules. This reporting should be broken down by zip code and should include:

- Number of serious illness protection requests
- Number of serious illness protection requests granted
- Number of payment agreements (in states where payment agreements are required)
- Number of serious illness account disconnections
- Number of serious illness protection reconnections.

RECOMMENDATIONS

Broad Scope: State serious illness protections should apply to any household that includes a person with a serious illness. Rather than attempting to define "serious illness" more specifically, states should rely on the certifying professional's judgment about whether the condition is a serious illness.

Certification Process: *Who can certify*: The persons who can certify serious illness should include a broad range of medical and social service professionals and others who can attest to the health status of the customer: e.g., physicians, physician assistants, osteopaths, nurse practitioners, nurses, mental health professionals, board of health or public health officials, and social service agencies.

***No second-guessing*: Utilities should not be allowed to second-guess the practitioner's certification**, but should be limited to asking the state regulator to resolve any questions about the certification's legitimacy or sufficiency.

***Form of certification*: States should provide a sample certification form**, and should minimize the amount of specific information about the customer's medical condition that must be provided.

Implementation and Duration of the Protection:

***Immediate implementation of an initial protection of at least 30 days.* The protection against termination—including a requirement of prompt reconnection if the household's utility service has already been terminated—should go into effect immediately upon receipt of a phone call from the customer or a certifying professional**, with a requirement to submit a written certification shortly (7 to 10 days) thereafter. The initial period of protection should be at least 30 days, and longer if specified in the letter from the certifying entity.

***Renewal.* The initial protection should be renewable for the duration of the medical condition**, as long as the certifying professional periodically attests that the illness is continuing. Any renewal period should be at least as long as the initial period of protection.

Adequate Notice and Easily-Accessible Process: Utilities should be required to notify customers of the serious illness protection rules when customers start service, annually thereafter, in collection and disconnection notices, and in any post-disconnection communications, in both English and any other language used by substantial numbers of their customers.

Affirmative Outreach:

***Proactive outreach*: Utilities should be required to act affirmatively to identify households with seriously ill individuals** and help them invoke the serious illness protections, including through extra notification efforts and the grant of authority to field agents to stop terminations.

***Public utility commission approval*: States should require notice to an approval by the public utility commission before disconnection of a seriously ill customer**.

***Data Collection, Reporting, and Analysis*: States should require utilities to collect, report, and analyze data regarding the implementation of their serious illness rules**. This reporting should be broken down by zip code and should include:

- Number of serious illness protection requests
- Number of serious illness protection requests granted
- Number of payment agreements
- Number of serious illness account disconnections
- Number of serious illness protection reconnections.

All of these protections should be incorporated into clear, formally adopted state rules, to create a uniform, baseline level of protection throughout the state for customers of regulated natural gas and electric companies. Uniform rules also make it easier for the state utilities commission, utilities, advocates, and others to develop outreach materials on serious illness protections.

ENDNOTES

1. Carma Hassan, *A New Jersey Woman on Oxygen Dies After the Power Company Shuts Off Her Electricity*, CNN, July 10, 2018.
2. Elizabeth Whitman, *On 107-Degree Day, APS Cut Power to Stephanie Pullman's Home. She Didn't Live*, Phoenix New Times, June 13, 2019.
3. *See, e.g.,* Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 18 (1978) ("utility service is a necessity of modern life [and] the discontinuance of . . . heating for even short periods of time may threaten health and safety"); Antonio Gasparrini, et al., *Mortality risk attributable to high and low ambient temperature: a multicountry observational study*, 386 The Lancet 369-375 (July 25, 2015).
4. *See, e.g.*, Antonio Gasparrini, et al., *Mortality risk attributable to high and low ambient temperature: a multicountry observational study*, 386 The Lancet 369-375 (July 25, 2015); Jane E. Brody, *Beware: Winter is Coming*, N.Y. Times, Dec. 19, 2016 (cold weather is a "stealth killer" with increases in related deaths "occurring as long as three or four weeks after a cold snap"); World Health Organization, Climate change and health (Feb. 1, 2018).
5. Environmental & Climate Justice Program, NAACP, *Lights Out in the Cold—Reforming Utility Shut-Off Policies as If Human Rights Matter* (Mar. 2017); Rachel Zimmerman, *Study of Boston Families in Poverty Finds 'Energy Insecurity' Can Also Bring Health Woes - From Asthma to Anxiety,* WBUR, Sept. 12, 2016.
6. National Energy Assistance Directors' Association, 2018 National Energy Assistance Survey Final Report 18-24 (Dec. 2018).
7. Ariel Drehobl & Lauren Ross, American Council for an Energy-Efficient Economy, Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities (Apr. 2016).
8. Diana Hernandez, *Energy Insecurity: A Framework for Understanding Energy, the Built Environment, and Health Among Vulnerable Populations in the Context of Climate Change*, 103 Am. J. Pub. Health 32-34 (Apr. 2013).
9. Alabama has a rule regarding serious illnesses, Ala. Pub. Serv. Comm'n Gen. R. 770-X-1-.12 (5), but it merely requires utility tariffs to set out termination rules "when life or health may be threatened by termination" or customer needs special consideration due to "age or handicap." An Alaska rule, Alaska Admin. Code tit. 3, § 52.450(c)(2), provides that a customer who is seriously ill, elderly, disabled, or dependent on life-support systems is entitled to a longer pre-termination notice, but does not provide any protection against termination. Louisiana appears to have no statute or rule that addresses serious illness protections. Two North Carolina rules, 4 N.C. Admin. Code 11.R.12-10 (gas), R.12-11 (electric), address serious illness but merely allow utility providers, if they choose, to delay termination if it would cause undue hardship or be especially dangerous to health, or where a resident is elderly or has a disability.
10. 220 Mass. Code Regs § 25.03(1). The medical professional's certification of serious illness is presumed valid, "unless otherwise determined by the Department [of Public Utilities] after investigation." 220 Mass. Code Regs. § 25.03(3). The serious illness letter must be renewed quarterly, "except that where illness is certified as chronic, the serious illness shall be renewed every six months." 220 Mass. Code Regs § 25.03(4). There is no limit on the number of renewals.
11. Idaho Admin. Code r. 31.21.01.308 (applies if resident is seriously ill or has a medical emergency, or will become seriously ill or have a medical emergency if utility service is disconnected).
12. Md. Code Regs. 20.31.03.01 (applies when "serious illness" or "need for life-support equipment" is certified).

13. 56 Pa. Code s. 56.2 (protection applies when there is certification that a customer or member of the customer's household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition).
14. For example, some states absolutely prohibit termination if the customer is on utility-driven life support equipment or if termination would likely result in death. If the illness is less serious than that, the customer must enter into a payment plan on the overdue amount and/or renew the serious illness certification letter regularly. Conn. Gen. Stat. § 16-262c(b)(1); Conn. Agencies Regs. § 16-3-100(e); Nev. Admin. Code §§ 704.370 (serioous illness), 704.375(3) (life support equipment/risk of death).
15. Neb. Rev. Stat. § 70-1606(1)(g).
16. Ark. Admin. Code § 126.03.2-6.17(B).
17. Wis. Admin. Code PSC §§ 113.0301(13) (electric), 134.062(11) (gas).
18. Me. Admin. Code 65-407 ch. 815, § 11(C) (electric and gas: utility "may not challenge the validity of an oral or written certification with a physician or a physician's agent, unless the utility has reason to believe that fraudulent information has been provided by the customer," at which point the utility "should file for an exemption" from the Consumer Assistance Division); 220 Mass. Code Regs. § 25.03(3) ("Certification of serious illness . . . shall be conclusive evidence of the existence of the condition claimed unless otherwise determined by the Department after investigation."). *See also* 4 Colo. Code Regs. § 723-3:3407(e)(IV)(C) (electric); 4 Colo. Code Regs. § 723-4:4407(e)(IV)(C) (gas) (medical certificate "shall be incontestable by the utility as to the medical judgment" but utility can use "reasonable means to verify the authenticity of such certification").
19. Colorado, Connecticut, Delaware, Massachusetts, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, Oregon, Texas, and Washington.
20. 220 Mass. Code Regs. § 25.03(3) (180 days, if the illness is denoted as "chronic"); Minn. Stat. § 216B.098 subdiv. 5(c)-(e); Mont. Admin. R. 38.5.1411(1).
21. Arkansas, Florida, Georgia, Iowa, Kentucky, Maine, Nebraska, Nevada, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, and Virginia.
22. 220 Mass. Code Regs. § 25.03(3).
23. Conn. Agencies Regs. § 16-3-100(e)(3)(B); Mich. Admin. Code r. 460.130a(1), (2).
24. Conn. Agencies Regs. § 16-3-100(e)
25. Conn. Agencies Regs. § 16-3-100(c).
26. 52 Pa. Code §§ 56.91(b)(8), 56.93(b), 56.94(1), 56.96, 56.97.
27. Me. Admin. Code 65-407 ch.815, § 10(L)(4).
28. 52 Pa. Code § 56.96.
29. N.M. Admin. Code § 17.5.410.33(B).
30. N. Y. Comp. Codes R. & Regs. tit. 16, § 11.5(c).
31. Chapter 282, HB 1189, Home Energy Assistance - Critical Medical Needs Program (Apr. 30, 2019).
32. N.M. Admin. Code § 17.5.410.25(F)(9)-(11).

APPENDIX A

SERIOUS ILLNESS CRITERIA IN EACH OF THE 50 STATES AND D.C.

This table summarizes the illness/medical condition/age criteria customers must meet either to be protected against termination, or to receive additional notice prior to termination. NOTE that, in some states, only the latter applies—additional notice—and that there is no protection against being terminated.

STATE	CITATION	DEFINITION
Alabama	*Ala. Pub. Serv. Comm'n Gen. R. 770-X-1-.12 (5).*	Utility tariffs shall set out termination rules "when life or health may be threatened by termination" or customer needs special consideration due to "age or handicap."
Alaska	*Alaska Admin. Code tit. 3, § 52.450(c)(2).*	Customer who is seriously ill, elderly, disabled, or dependent on life-support systems entitled to longer pre-termination notice, but no protection against termination.
Arizona	*Ariz. Admin. Code § R14-2-211(A) (5), (6) (electric).*	No disconnection if customer is unable to pay and certifies termination "would be especially dangerous" to health; "[l]ife supporting equipment ... is dependent on utility service"; but payment plan may be required.
Arkansas	*Ark. Admin. Code § 126.03.2-6.17(A) (serious illness).*	Termination of service postponed for 30 days (renewable once) if medical certificate certifies that termination would cause "substantial risk of death or gravely impair the health" of customer or permanent household member.
California	*Cal. Pub. Util. Code §§ 779(b)(3) (regular serious illness), 779.3 (medical baseline).*	**Regular serious illness protection:** Financially unable to pay & willing to enter into a deferred payment agreement (DPA); if loss of service is life threatening. **Medical baseline eligibility:** If customer is financially unable to pay and willing to enter into DPA, no termination if: customer under hospice care, depends on life-support equipment, or has a life-threatening condition.
Colorado	*4 Colo. Code Regs. §§ 723-3:3407 (electric), 723-4:4407 (gas).*	Discontinuance of service will aggravate an existing condition or create a medical emergency.
Connecticut	*Conn. Gen. Stat. § 16-262c(b) (1) (seriously ill, life- threatening condition, child under 24 months recently released from the hospital); Conn. Agencies Regs. § 16-3-100(e).*	No termination when "any resident therein is seriously ill" as certified by a "registered physician" (Conn. Agencies Regs. § §16-3-100(e)). Absolute protection, year-round, in financial hardship cases where termination would "create a life-threatening situation" or when a child under 2 has been released from hospital with doctor's note specifying need for utility service; protection, from Nov. 1 to May 1, for "hardship" cases, including those with serious illness (Conn. Gen. Stat. § 16-262c(b)(1)).

APPENDIX A *(cont.)*

SERIOUS ILLNESS CRITERIA IN EACH OF THE 50 STATES AND D.C.

STATE	CITATION	DEFINITION
Delaware	*Del. Code Ann. tit. 26, § 117(d).*	So ill that disconnection will adversely affect resident's health or recovery.
District of Columbia	*D.C. Mun. Regs tit.15, § 311.1(A).*	Disconnection is detrimental to health and safety of occupant.
Florida	*Fla. Stat § 366.15 (utility tariffs).*	Medically essential: dependence on electric-powered equipment that must be operated continuously or per physician's instruction to avoid loss of life or immediate hospitalization.
Georgia	*Ga. Comp. R. & Regs. 515-3-2.03 (electric and gas); 515-3-3.03 (marketers).*	Serious illness which would be aggravated by disconnection.
Hawaii	*Haw. Admin. Rules § 6-60-8.*	Special disconnection process for elderly and disabled.
Idaho	*Idaho Admin. Code r. 31.21.01.308.*	Resident is seriously ill, or has a medical emergency, or will become seriously ill or have a medical emergency if utility service is disconnected.
Illinois	*Ill. Admin Code tit. 83, §§ 280.130(m), 280.160(g), 280.160(d)(4), (j).*	Disconnection will aggravate an existing medical emergency or create a medical emergency.
Indiana	*170 Ind. Admin. Code 4-1-16 (c) (electric), 5-1-16(c) (gas).*	Disconnection would be a serious and immediate threat to the health and safety of resident.
Iowa	*Iowa Admin Code rr. 199-19.4(476) (gas), 199-20.4(476) (electric).*	Disconnection poses especial danger to the health of any permanent resident. "Especial danger" is indicated if person appears to be seriously impaired (because of mental or physical problems), is unable to manage his/her own resources, carry out activities of daily living, or needs assistance from others to be protected from neglect or hazardous situations. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacitations; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstance which indicate a severe or hazardous health situation.
Kansas	*Kansas Corp. Comm'n Electric, Nat. Gas, Water Billing Standards (Jan 20, 2012).*	Disconnection would be especially dangerous to the health of resident. Consideration is given to weather, resident's medical condition, age, or disability.
Kentucky	*807 Ky. Admin. Regs 5:006 (sect. 15).*	Disconnection would aggravate a debilitating illness or infirmity currently suffered by resident.
Louisiana		No serious illness rule.

APPENDIX A *(cont.)*

SERIOUS ILLNESS CRITERIA IN EACH OF THE 50 STATES AND D.C.

STATE	CITATION	DEFINITION
Maine	*Me. Admin. Code 65-407 ch. 815, § 11.*	A medical emergency.
Maryland	*Md. Code Regs. 20.31.03.01.*	Disconnection will aggravate a serious illness or prevent the use of life-support equipment.
Massachusetts	*220 Mass. Code Regs. § 25.03.*	A serious illness as certified by appropriate authority listed in the regulation.
Michigan	*Mich Admin Code RR. 460.130 (medical emergency), 460.130a (critical care customer).*	**Medical emergency:** Resident has a medical condition, requires medical equipment for a medical emergency, and certification sets out the specific time period where disconnection will aggravate the medical emergency. **Critical care customer:** One for whom an interruption of service would be immediately life-threatening.
Minnesota	*Minn. Stat. § 216B.098 subdiv. 5.*	Medical emergency or medical equipment requiring electricity to sustain life.
Mississippi	*39 Miss. Admin. Code RR. 8.120 (mid-winter and medical emergency), 8.125 (life-threatening).*	No termination Dec. through March, if certification of financial hardship and (undefined) "medical emergency" + payment plan made (R. 8.120); separately, 60 days of protection if life threatening situation certified (R. 8.125).
Missouri	*4 Mo. Code Regs Ann. tit. 4, § 240-13.050 (risk of death/gravely impair health).*	**Serious medical condition:** disconnection would rapidly give rise to a substantial risk of death or gravely impair the health of resident.
Montana	*Mont. Admin. R. 38.5.1411.*	Loss of service would aggravate an existing medical condition which would threaten the health of resident.
Nebraska	*Neb. Rev. Stat. § 70-1606(1)(g).*	Resident has an existing illness or disability that would cause the resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household
Nevada	*Nev. Admin. Code §§ 704.370 (serious illness), 704.375 (life-support equipment).*	**Regular serious illness:** Termination would be especially dangerous to the health of resident and constitute an emergency affecting health. May consider the feebleness, advanced age, physical disability, mental incapacity, serious illness, or other infirmity of resident. **Life support:** Resident is confined to location where service is provided; on a life-support device; will likely die if service is terminated.
New Hampshire	*N.H. Code Admin. R. Ann. PUC 1205.02.*	Physical or mental health condition which would be a danger to the physical or mental health of the resident.

APPENDIX A *(cont.)*

SERIOUS ILLNESS CRITERIA IN EACH OF THE 50 STATES AND D.C.

STATE	CITATION	DEFINITION
New Jersey	*N.J. Admin. Code § 14:3-3A.2; see also N.J. Stat. Ann. § 48:2-29.48 to 48:2-29.53 (Linda's Law, eff. Jan.1, 2020 re: electric service).*	**Serious illness:** Medical emergency which would be aggravated by disconnection. *New* **Linda's Law:** Resident uses life-sustaining equipment powered by electricity.
New Mexico	*N.M. Admin. Code §§ 17.5.410.7, 17.5.410.43 (form).*	An illness or injury that results in a medical professional's determination that disconnection will give rise to a substantial risk of death or would gravely impair health.
New York	*16 N.Y. Comp. Codes R. & Regs. tit. 16, § 14.5.*	**Medical emergency:** Resident suffers from a serious illness or a medical condition that severely affects his well-being. If certification notes chronic condition, renewal period is 60 days or longer. If certification notes life-support system, certification remains effective until terminated by commission (consumer must still renew "inability to pay" forms quarterly).
North Carolina	*4 N.C. Admin. Code 11.R.12-10 (gas), R.12-11 (electric).*	Companies may, if they choose, delay termination if it would cause undue hardship or be especially dangerous to health, or where resident is elderly or has a disability.
North Dakota	*N.D. Admin. Code §§ 69-09-02-05.1 (electric), 69-09-01-18.1.1(gas).*	Dangerous health condition exists (includes life support), customer is 65 or older or has a disability.
Ohio	*Ohio Admin. Code 4901:1-18-06(C).*	Disconnection would be especially dangerous to health, or medical or life-support equipment would be impossible or impractical to operate.
Oklahoma	*Okla. Admin. Code §§ 165:35-21-10 (electric), 165:45-11-14 (gas).*	**Life-threatening situation:** resident dependent on life-sustaining equipment.
Oregon	*Or. Admin. R. 860-021-0410.*	Disconnection would significantly endanger the physical health of household member.
Pennsylvania	*52 Pa. Code § 56.2.*	Customer or household member is seriously ill/diagnosed with a medical condition which requires the continuation of service to treat the medical condition.
Rhode Island	*810 R.I. Code R. pts. 10-00-1.2, 10-00-1.4.*	**"Seriously ill":** actually or potentially "life-threatening or that will cause irreversible adverse consequences to human health" (10-00-1.2); **"disabled":** "physical or mental impairment... which substantially limits one or more of such person's major life activities."

APPENDIX A *(cont.)*

SERIOUS ILLNESS CRITERIA IN EACH OF THE 50 STATES AND D.C.

STATE	CITATION	DEFINITION
South Carolina	*S.C. Code Ann. Regs. 103-352 (electric), 103-452 (gas); S.C. Code Ann. §§ 58-5-1110, 58-5-1120, 58-27-2510, 58-27-2520 ("special needs" customers).*	No termination Dec. to Mar. if it "would be especially dangerous to such person's health" (S.C. Code Ann. Regs. 103-352, 103-452). "Special needs customers" entitled to additional notice and payment arrangements prior to termination (S.C. Code Ann. §§ 58-5-1120, 58-27-2510).
South Dakota	*S.D. Admin. R. 20.10.20.11.*	Disconnection will aggravate an existing medical emergency.
Tennessee	*Tenn. Comp. R. & Regs 1220-04-05-.18 (gas), 1220-04-04-.19 (electric).*	Disconnection will aggravate an existing medical emergency.
Texas	*16 Tex. Admin. Code §§ 25.29(g) (electric service providers), 25.483(g) (retail electric service providers), 25.497 ("Chronic Condition" and "Critical Care" customers).*	Various levels of protection for "seriously ill" customers, "Chronic Condition Residential Customers," and "Critical Care Residential Customers."
Utah	*Utah Admin. Code r. 746-200-7(A)(3), (A)(4), (D)(1), (D)(2).*	Protected categories include "serious illness or infirmity" disconnection will "injure the person's health or aggravate the person's illness" ((A)(4)(c)(i) and those on "life support equipment": "immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations" ((A)(3)(b)(vi)).
Vermont	*Vt. Admin. Code 18-1-4:3.302.*	Resident would suffer immediate and serious health hazard by disconnection or failure to reconnect.
Virginia	*20 Va. Admin. Code §§ 5-330-20, 5-330-40.*	**Serious medical condition:** Physical or psychiatric condition that requires medical intervention to prevent further disability, loss of function, or death.
Washington	*Wash. Admin. Code 480-100-128 (electric), 480-90-128 (gas).*	Disconnection would aggravate an existing medical condition.
West Virginia	*W. Va. Code R. §§ 150-3-4.8.1.e.1 (electric), 150-4-4.8.1.e.1 (gas).*	**Certified Health Condition:** Disconnection would be dangerous to resident for medical reasons. If certified as permanent condition, does not need to be renewed.
Wisconsin	*Wis. Admin. Code PSC §§ 113.0301(13) (electric), 134.062(11) (gas).*	Disconnection will aggravate an existing medical or protective service emergency.
Wyoming	*023.0002.3 Wyo. Code R. § 9.*	Health and safety would seriously be endangered if service disconnected.

APPENDIX B

STATES THAT ALLOW PHONE CALL FOLLOWED BY WRITTEN CERTIFICATION

States that allow a phone call followed by written certification to stop termination of electric or gas utility for a household with a seriously ill person

STATE	CITATION	DESCRIPTION
Arkansas	*Ark. Admin. Code § 126.03.2-6.17(B).*	Initial phone or letter; written certification within 7 days.
Connecticut	*Conn. Agencies Regs. § 16-3-100(e).*	Initial notice can be by phone; written certification within 7 days.
Georgia	*Ga. Comp. R. & Regs. 515-3-2.03, 515-3.03.*	Initial notice can be oral or written from customer, followed by written certification within 10 days.
Massachusetts	*220 Mass. Code. Regs. § 25.03(2).*	Initial notice from listed medical professionals may be by phone; certification form must be returned to the utility within 7 days.
Minnesota	*Minn. Stat. § 216B.098 subdiv.5.*	Initial phone certification followed by written certification within 5 days.
Nebraska	*Neb. Rev. Stat, § 70-60691)(g).*	Initial notice followed by written certificate within 5 days.
New York	*N.Y. Comp. Codes R. & Regs. tit. 16, § 11.5(a)(3).*	May be initiated by phone call followed by written certification within 5 business days.
Oregon	*Or. Admin. R. 860-021-0410.*	Initial certification may be oral if followed by written certification within 14 days.
Virginia	*20 Va. Admin. Code § 5-330-40 (electric).*	Customer can initiate protection by notifying utility, but written certification is provided within 10 days.
Washington	*Wash. Admin. Code 480-100-128 (electric), 480-90-128 (gas).*	Verbal notification of a medical emergency can stop a termination for 5 days so a written certification can be submitted.

APPENDIX C

STATES WITH SAMPLE PROMPT RECONNECTION PROTECTION RULES

STATE	CITATION	DESCRIPTION
Maine	*Me. Admin. Code 65-407 ch.815, § 11(D).*	Reconnection of service: When a utility is required to reconnect service under this section, the utility shall attempt to provide service on the day it receives the certification. In any case, service must be provided by 5:00 p.m. of the next day.
Pennsylvania	*52 Pa. Code § 56.115.*	When service is required to be restored under this section and §§ 56.114, 56.116 to-56.118, and 56.191, the public utility shall make a diligent effort to have service restored on the day of receipt of the medical certification. In any case, service shall be reconnected within 24 hours. Each public utility shall have employees available or on call to restore service in emergencies.
Rhode Island	*810 R.I. Code R. pts. 10-00-1.4(H),10-00-1.17(A).*	In those instances where a Protected Status Customer has his or her utility service terminated because he or she and/or the public utility are unaware of that individual's protected status, that individual's utility service shall be restored immediately (10-00-1.4(H)); Restoration of service by Commission Action: The Administrator of the Division of Public Utilities and Carriers has the emergency authority to order immediate restoration of service when necessary to protect the health, welfare, and safety of the residents (10-00-1.17(A)).
Virginia	*20 Va. Admin. Code § 5-330-40(C).*	If customer was disconnected within preceding 14 days and serious illness certificate is provided, utility shall promptly reconnect and not require reconnection fees.

APPENDIX D

SAMPLE RENEWAL PROVISIONS OF STATE SERIOUS ILLNESS RULES

STATE	CITATION	DESCRIPTION
Connecticut	*Conn. Agencies Regs. § 16-3-100(e)(3)(B),*	Duration is as set forth in physician's certificate; 15 days if not specified. Renewals must be submitted by last day of protection; if none specified in renewal letter, renewals last 15 days; can be renewed indefinitely for life- threatening illnesses.
Massachusetts	*220 Mass. Code Regs. § 25.03(3).*	Certification renewed quarterly, unless chronic condition, then every 6 months.
Michigan	*Mich. Admin. Code rr. 460.130(5), (6) (serious illness), 460.130a(1), (2) (critical care customers).*	Non-critical serious illness: Initial protection of 21 days renewable twice per household member (i.e., up to 63 days per year); Critical care customers: Must be renewed annually; no limit on renewals.
Minnesota	*Minn. Stat. § 216B.098 subdiv.5(c)-(e).*	Initial certification can last 6 months; in discretion of utility, can be extended for up to 12 months.
Oregon	*Or. Admin. R. 860-021-0410(4).*	Notice to renew provided at least 15 days prior to certificate's end date (serious illness protection is valid for length of time on certificate, but up to 6 months for serious illness and 12 months for a chronic condition).

APPENDIX E

SAMPLE NOTICE PROVISIONS OF STATE SERIOUS ILLNESS PROTECTION NOTICE RULES

STATE	CITATION	NOTICE REQUIREMENTS
Arkansas	*Ark. Admin. Code § 126.03.2-6.07(G).*	Every shutoff notice shall include a statement that customer with serious medical condition, over 65, or with a disability may contact the utility about qualifying for delaying termination of service.
Connecticut	*Conn. Agencies Regs. § 16-3-100(c), (e).*	Every termination notice "shall plainly indicate that the utility company may not terminate residential utility service to the home of any customer during such time as any resident therein is seriously ill" (§ 16-3-100(e)). A summary of customer rights, including as to serious illness, must be provided when service initiated and annually thereafter (§ 16-3-100(c)).
Delaware	*26-3002 Del. Code Regs. § 3.2.5.*	Notice of termination must include notice of the protection that if any occupant is so ill that disconnection would adversely affect health or recovery, and this has been duly certified, termination is prohibited.
Georgia	*Ga. Comp. R. & Regs. 515-3-2-.02(a)(4).*	Written disconnection notices shall include the procedure for preventing disconnection where there is a medical emergency.
Idaho	*Idaho Admin. Code r. 31.21.01.305.*	Termination notice must include a statement that a certificate notifying the utility of a serious illness or medical emergency may delay termination.
Maine	*Me. Admin. Code 65-407 ch. 815, § 10(J).*	Disconnection notice must contain statement about customer's right to postpone disconnection due to a medical emergency.
Massachusetts	*220 Mass. Code Regs. § 25.03(5).*	Collections notices must include description of serious illness protection.
Michigan	*Mich. Admin. Code r. 460.140(2)(f).*	Disconnection notice must contain information that the utility will postpone shutoff if there is a documented, certified medical emergency.
Nebraska	*Neb. Rev. Stat. § 70-1606(1)(g).*	Disconnection notices must include a statement that disconnections can be postponed or prevented with a physician's certificate of an existing illness or disability.
New Mexico	*N.M. Admin. Code.§ 17.5.410.42.*	15-day disconnection notice shall include specific notice about medical certifications protections.
North Dakota	*N.D. Admin. Code § 69-09-02-05.1 (electric).*	Disconnection notice includes notice that customer can delay termination for up to 30 days if there is a "dangerous health condition," or resident 65 or older or with a disability.

APPENDIX E *(cont.)*

SAMPLE NOTICE PROVISIONS OF STATE SERIOUS ILLNESS PROTECTION NOTICE RULES

STATE	CITATION	NOTICE REQUIREMENTS
Ohio	*Ohio Admin. Code 4901:1-18-06(A)(5)(h).*	Disconnection notice includes information that medical certification program and forms are available from utility where disconnections would be especially dangerous to health.
Pennsylvania	*52 Pa. Code §§ 56.91(b)(8),56.93(b),56.94(1), 56.96, 56.97.*	Disconnection notice must include medical certificate notice (§ 56.91(b)(8)). Required personal contact before disconnection shall include information on emergency medical procedures (§ 56.93(b)). At time of effectuating termination, if evidence of serious illness or medical condition, termination may not occur (§ 56.94(1)). Immediately post-termination, medical emergency notice shall be conspicuously posted or delivered to a responsible adult/occupant (§ 56.96)). If customer contacts utility after issuance of initial termination notice and before the actual termination, the utility shall fully explain the medical emergency procedures (§ 56.97)).
Wyoming	*023.0002.3 Wyo. Code R. § 9.*	Disconnection notice must include explicit information about the serious illness protection.

APPENDIX F

REQUIREMENTS FOR DOCUMENTATION OF SERIOUS ILLNESS AND SAMPLE FORMS*

Following are sample forms of states that have effective language to document serious illness.

Arkansas

Ark. Admin. Code § 126.03.2-6.17(D).

D. Physician's Certificate

A completed physician's certificate must be signed by a physician and must be in the following form. The utility shall provide a copy of the physician's certificate form to the physician.

PHYSICIAN'S CERTIFICATE OF MEDICAL NEED FOR UTILITY SERVICE

The Arkansas Public Service Commission requires utilities under its jurisdiction to honor physician's certificates which attest to the fact that a utility customer or any permanent resident of the household has a serious medical condition. The certificate must clearly state that the suspension of utility service would give rise to a substantial risk of death or gravely impair the health of the customer or another permanent household resident.

A licensed physician or other health care professional providing health care services to the patient may notify the utility of the serious medical condition. The notice must be followed within 7 days by a certificate. The certificate is valid for up to 30 days and may be extended for one additional 30 day period by reverification by the physician or health care professional prior to the expiration date of the first certificate. This reverification requires that an additional certificate be submitted to the utility.

You are being asked to verify that the stated condition exists. This certificate allows the utility customer time to secure payment for utility service or to make alternate arrangements for care of the patient.

Thank you for your cooperation.

---

*These forms are the most recent available. For updates, please consult the utility company or state utility commission

APPENDIX F *(cont.)*

REQUIREMENTS FOR DOCUMENTATION OF SERIOUS ILLNESS AND SAMPLE FORMS

To: _____ _____
(Name of Utility) Date

I certify that loss of utility service would give rise to a substantial risk of death or gravely impair the health of who lives at

_____.

The nature of the serious medical condition is

_____.

The effect of loss of utility service would be

_____.

This condition is expected to continue _____ days.

I am licensed to practice medicine by the Arkansas State Medical Board or a comparable licensing authority in the State of _____.

Physician _____

Address _____

Phone number _____

APPENDIX F *(cont.)*

REQUIREMENTS FOR DOCUMENTATION OF SERIOUS ILLNESS AND SAMPLE FORMS

Idaho

Idaho Admin Code r. 31.21.01.308.01.

The certificate must contain the following information:

a. A statement that the customer, a member of the customer's family, or other permanent resident of the premises where service is rendered is seriously ill or has a medical emergency or will become seriously ill or have a medical emergency because of termination of service, and that termination of utility service would adversely affect the health of that customer, member of the customer's family, or resident of the household.

b. The name of the person whose serious illness or medical emergency would be adversely affected by termination and the relationship to the customer, and

c. The name, title, and signature of the person certifying the serious illness or medical emergency.

Illinois

Ill. Admin. Code tit. 83, § 280.160(d).

d) Certificate Content:

1) Name and contact information for the certifying party;

2) Service address and name of patient;

3) A statement that the patient resides at the premises in question; and

4) A statement that the disconnection of utility service will aggravate an existing medical emergency or create a medical emergency for the patient.

Maine

Me. Admin. Code 65-407 ch.815, §11(C).

The utility may require that a written certification include the following if the utility provides a form for the physician to complete:

1. The name and service location of the customer (to be provided by the utility).

2. The name and address of the person with the medical emergency.

3. A statement that a serious illness or medical condition exists which would be seriously aggravated by lack of utility service.
4. The anticipated length of the medical emergency.
5. The specific reason why continued service is required.
6. The name, office address, telephone number and signature of the certifying physician.

Massachusetts

220 Mass. Code Regs. § 25.03(2)(a).

Said certificate shall state the name and address of the seriously ill person, the nature of the illness and the business address and telephone number of the certifying physician, physician assistant, nurse practitioner or local board of health;

Sample template for Serious Illness letter
(no official form required to document illness):

To Whom It May Concern:

[Name of patient] who resides at [address] is a patient of mine [or: is under my care].

[Name of patient] is being treated for [describe illness or condition], a serious illness.

Sincerely,

[Health professional's name and contact information]

Sample template for Serious Chronic Illness letter
(no official form required to document illness):

To Whom It May Concern:

[Name of patient] who resides at [address] is a patient of mine [or: is under my care].

[Name of patient] is being treated for [describe illness or condition], a chronic illness.

Sincerely,

[Health professional's name and contact information]

APPENDIX F *(cont.)*

REQUIREMENTS FOR DOCUMENTATION OF SERIOUS ILLNESS AND SAMPLE FORMS

Montana

Mont. Admin. R. 38.5.1411.

All certifications must be in writing and provide the name and address of the person with the medical condition that would be aggravated by a termination of service. The certification must include the printed name, signature, office address, and telephone number of the certifying licensed health care professional.

Ohio

Ohio Admin. Code 4901:1-18-06(C)(3)(b).

(b) The certification of the medical condition or the need for the medical or life-supporting equipment required by paragraph (C)(1) of this rule shall be in writing and shall include the name of the person to be certified; a statement that the person is a permanent resident of the premises in question; the name, business address, and telephone number of the certifying party; a statement of the need for the medical or life-supporting equipment, if applicable; and a signed statement by the certifying party that disconnection of service will be especially dangerous to the health of a permanent resident of the premises.

PUCO Sample form (see next page).

APPENDIX F *(cont.)*

REQUIREMENTS FOR DOCUMENTATION OF SERIOUS ILLNESS AND SAMPLE FORMS

30-Day Medical Certification

(Name of Utility Company)

Instructions:

The following is to be completed by a licensed medical professional and only after you, or someone in your office, has examined the individual whose name appears as the patient on the form below. This form applies only in situations where, in your professional opinion, termination of (gas/electric/water) utility service would be especially dangerous to the health of that individual. If, in your professional opinion an especially dangerous situation does not exist, please do not sign this form.

If you have any questions regarding this form, please contact: (utility company name and phone number). You may fax the completed form to us at (fax number).

I certify that, to the best of my knowledge, the information provided below is true.

The following medical information must be certified by one of the following. Please indicate if you are a:

☐	licensed physician	☐	physician assistant
☐	clinical nurse specialist	☐	certified nurse practitioner
☐	certified nurse-midwife	☐	local board of health physician

Please complete the following. Please print.

I certify that my patient has been examined by me and I have determined the following to be true:

Name of patient: _____

Patient's permanent residence: (street address)_____

(city, state, zip code)_____

Check the box of the applicable condition:

☐ **This patient suffers from a hazardous medical condition and termination of (gas/electric/water) utility service would be especially dangerous or life-threatening.**

☐ **This patient uses medical or life-supporting equipment and termination of (gas/electric/water) utility service would make operation of that equipment impossible or impractical.**

I certify that I advised my patient that disclosure of the requested information may be subject to redisclosure by the recipient and no longer be protected by the HIPAA rules and regulations.

Authorized Signature_____

Date _____

(Please Print)

Name of Licensed Medical Professional_____

Business Address _____

Business Telephone_____

Current State License or Certificate Number: _____

All sections must be fully completed in order to process the medical certification request.

National
Consumer Law
Center

NATIONAL HEADQUARTERS

7 Winthrop Square, Boston, MA 02110

(617) 542-8010

NCLC.ORG

WASHINGTON OFFICE

Spanogle Institute for Consumer Advocacy
1001 Connecticut Ave, NW, Suite 510
Washington, DC, 20036
(202) 452-6252

The Washington Post
Democracy Dies in Darkness

National Weather Service proposes eliminating 'advisories' to simplify severe warning system

The suggested changes are part of a larger effort at streamlining public communication

By **Matthew Cappucci**

June 12, 2020 at 10:06 a.m. CDT

Do you know the difference between a flash flood watch and a flood advisory? How about a winter weather advisory vs. a blizzard watch? Or, more importantly, a tornado watch vs. a tornado warning?

Deciphering the myriad alerts issued by the National Weather Service isn't easy. With roughly 100 different warnings or advisories the agency disseminates during hazardous weather, it comes as no surprise that mix-ups among the public are routine.

Now, the National Weather Service is giving its warning paradigm a facelift to reduce confusion and streamline the process of communicating weather hazards. Some products may be eliminated entirely, and others combined or restructured. It's an action many social scientists say is a step in the right direction, but some wonder if the arguably chaotic system is even salvageable.

The National Weather Service announced the proposed changes Thursday, and is seeking public feedback via a survey through Aug. 21. A summary of public responses will be provided to National Weather Service senior leadership in September, and depending on whether any revisions are warranted, the proposed changes could be implemented next

year.

The proposed changes and debates surrounding them may seem like semantics, but severe weather imposes massive costs on the U.S. economy each year, as well as exacts a heavy toll on human lives. Flooding, for example, killed more than 100 people a year during the 2015 through 2018 period, and lightning kills an average of 49 people each year.

Eliminating advisories altogether

Among the most significant proposed changes is axing weather advisories altogether. Social science research undertaken by the NWS over the past several years revealed that advisories are poorly understood and inaccurately interpreted. For example, advisories are frequently conflated with watches.

The advisory, watch and warning hierarchy is something the National Weather Service says was never meant to appear as a three-tiered system.

A watch is issued when conditions meeting the criteria of a warning are possible within a particular time frame. If the threshold for a warning is not expected to be reached, an advisory will often be implemented instead.

Eli Jacks, chief of the forecast services division at NWS headquarters in Silver Spring, Md., says the proposed revisions to the system aim to disentangle watches from advisories.

According to Jacks, NWS held a workshop in 2015 that brought together social scientists, broadcast meteorologists, emergency managers and agency forecasters.

"There was a chorus that the term 'advisory' is misunderstood, and watches vs. warnings are misunderstood," Jacks said. "If a watch and an advisory are conflated with one another, then neither one has much value."

What is the role of an advisory?

The NWS notes that an advisory is not a "downgrade" from a watch. But its products have historically suggested otherwise.

Consider the high wind watch. That's issued well in advance of an anticipated period of damaging winds and highlights the potential for sustained winds of 40 mph for at least an hour, or gusts of 58 mph or higher for any duration. If the event nears and those criteria are deemed likely to be met, a high wind warning is issued.

A wind advisory, on the other hand, covers winds that aren't strong enough for a warning but that can still cause impacts. The advisory is issued for sustained winds of 31 to 39 mph, or gusts of 46 to 57 mph. So, some people might view a wind advisory as a clear step down from a high wind watch, since a watch lays the groundwork for a later warning. The same is true for many other hazards.

Winter weather fans, for example, tend to be disappointed when a winter storm watch is converted into a winter weather advisory, indicating lower snow and ice totals are expected.

"There are many pieces to this project," said Jacks, who hopes the survey will shed some light on the potential effectiveness of the proposed changes.

"The main survey item that's going to go back [to the National Weather Service], the big kahuna, is doing away with advisories."

You can take that survey here.

That will leave watches and warnings — a two-step system that Jacks says will make it clearer for emergency management and other users when it comes to what action items to take.

"A watch means prepare. A warning means act," Jacks said.

Replacing advisories with bulletins

Jacks says advisories aren't disappearing entirely. While warnings are used to convey threats to life and property, advisories are generally for lower-impact events that are primarily inconvenient — but can still be dangerous if plans aren't altered or if risks are taken.

That's why, under the proposed changes, bulletins would be issued instead of what would have been an advisory. But they wouldn't be called anything special, since the text of each bulletin would provide full hazard descriptions. And, by dropping advisories altogether, the Weather Service would eliminate the need for certain thresholds to be reached to issue an alert — allowing them more flexibility during high-impact events.

In a recent webinar aimed at educating meteorologists, emergency management and other core partners on the changes, Jacks noted that the use of a statement is a more realistic way to communicate certain weather hazards. After all, each event is unique. An inch or two of snow in some areas may not have warranted a winter weather advisory, for instance, but could have a significant impact during rush hour.

The format of these statements would be altered, too.

"We want the reformatting of the messages into a 'what, where, when' impact format," Jacks said. "It's really about a person who isn't a professional, who needs to understand information without going to a dictionary."

What will a replacement look like?

With 24 advisories potentially being replaced by specially tailored statements, questions arise over what the new implementation will look like. Jacks explained that's still being

determined, but that the new product will be getting a "VTEC," or valid time event code.

This is important because it will allow private weather vendors such as the maker of your favorite cellphone weather app to disseminate the bulletins like they would for a severe weather warning. Specifically, app makers and television meteorologists could translate the messages into colors, icons or headlines that appear on your phone or television screen. It also assigns the alerts an expiration date and time.

"Think of VTEC as a QR code on a milk carton that you scan so it identifies it," explained Jacks. "The VTEC is the QR code in our messaging that allows our partners to know what the hazard is, severity, when it starts and ends ... the key information they need to automate things."

Other possible changes

In addition to the proposed advisory overhaul, NWS is working to trim down the list of warnings. That may come by merging some alerts — such as those for flooding.

"We have so many flavors of flood advisory," said Jacks, mentioning urban and small stream flood advisories, flood advisories, coastal flood advisories, lakeshore flood advisories, etc. Those will all disappear once advisories are discontinued.

He also said that alerts in advance of flooding will be "consolidated into one generally used flood watch."

Flash flood watches may be utilized more sparingly, reserved for higher-end rapid rises of water levels.

The Weather Service is also testing software upgrades that will allow it to focus its alerts, including watches, for smaller areas — drawing polygons on the map like what's done for severe thunderstorm and tornado warnings. It's all beneath the umbrella of a larger

hazard simplification effort, known colloquially within the Weather Service as "Hazsimp."

What the social science says

Despite the steps being taken, some social scientists feel more needs to be done to have a meaningful impact. Among them is Susan Jasko, a senior scientist at the Center for Advanced Public Safety at the University of Alabama.

"I think that the effort to simplify the suite of products that the National Weather Service issues and uses is a good idea," she said in an interview. "Historically what they have done is layer products, adding things without sunsetting things."

But this round of "sunsetting" could prove challenging, Jasko explained.

"Just eliminating the whole category [of advisories presents] a lot of other problems as well," she said. "I guess I'm also wondering, if we just swap the word 'statement' for 'advisory,' have we solved the problem ... about making sure the significance to personal safety is conveyed?"

She worries that people will interpret the statement similarly to how advisories have been received, which could defeat the purpose of the change.

"I'm not sure other people will see it that way ... in some ways, it may not solve the basic problem, 'how do we get the attention of people at the right time, in the right way, in regard to a specific hazard?' So I think that's still an open question," Jasko said.

Jasko also noted that the remaining two headlines of risk — watches and warnings — are still highly confusing to the public.

"Many meteorologists may disagree, but there's nothing inherently more urgent about [one word than] the other," she explained, stating that the Weather Service's desire to assign meaning to the words doesn't transcend the preconceived linguistic definitions associated with them.

"If I throw a ball at your head, I'll say 'watch out!' " Jasko said. "That's a pretty urgent thing."

But in weather, a "watch" amounts to a heads up of a brewing potential.

Jasko said the best approach to remedying the misinterpretation of alerts may not consist solely of making swaps or renaming products, but rather come down to education.

"I think that without committing an effort at education of the public and at young people, I'm not sure it's going to solve as many confusion problems as the National Weather Service is after," Jasko said.